

CONTENTS

		<i>Page</i>
PART	9	CORRECTIONS, CANCELLATIONS, AND REFUNDS 3607
CHAPTER	1	GENERAL PROVISIONS 3607
Section	4801	“Taxes” 3607
	4802	“District attorney” 3607
	4803	Notice to Controller [Repealed]..... 3607
	4804	Performance of acts by authorized county officers 3607
	4806	Prohibition of tax refunds 3607
	4807	Injunction..... 3608
	4808	Declaratory relief 3608
CHAPTER	2	CORRECTIONS 3609
ARTICLE	1	GENERALLY..... 3609
Section	4831	Incorrect entries; transfers to unsecured roll 3610
	4831.5	Correction of errors caused by the assessee 3611
	4832	Auditor’s errors 3611
	4832.1	Cancellation when auditor error less than five dollars 3611
	4833	Incorrect assessments; in-lieu payment amounts [Repealed] 3612
	4833.1	Relief of penalties..... 3612
	4834	Correction procedure 3612
	4834.5	Clerical errors 3613
	4835	Decrease 3613
	4836	Increase; notice 3613
	4836.5	Increase; tax rate applied 3613
	4837	Entry and accounting 3614
	4837.5	Payment over three years [Repealed]..... 3614
	4837.5	Errors; payment over four years 3614
	4838	Public calamity 3616
	4839	Notice of power to sell tax-defaulted property, clerical errors [Repealed] 3616
	4839.1	Tax-defaulted property erroneously redeclared tax defaulted 3616
	4839.2	Board of supervisors’ approval of sale..... 3617
	4840	Taxes mistakenly on secured roll..... 3617
	4841	Correction in publication 3617
	4842	Manner of publication 3617
	4843	“Corrections” to 1978-79 assessment roll [Repealed] 3617

CONTENTS (Contd)		<i>Page</i>
4844	“Corrections” to 1979–80 assessment roll [Repealed]	3617
4845	“Corrections” to 1980–81 assessment roll [Repealed]	3617
ARTICLE 2	ERRORS ON THE BOARD ROLL	3618
Section 4876	Board’s errors.....	3618
4876.5	Correction of errors caused by the assessee.....	3618
4877	Increase; notice	3618
4878	Entry by board	3618
4879	Transmission	3618
4880	Entry locally	3618
ARTICLE 3	INCORRECT APPLICATION OF PAYMENTS	3619
Section 4911	Payment or credit for payment on wrong property.....	3619
4911.1	Payment credited to wrong property after title guarantee	3619
4912	Cancellation voucher	3620
4913	Notice of proposed transfer.....	3620
4914	Hearing.....	3620
4915	Payment of balance	3620
4916	Refund of excess	3620
ARTICLE 4	INCORRECT APPLICATION OF PAYMENT ON REDEMPTION	3621
Section 4920	Conditions on which article to be applicable.....	3621
4921	Verified statement by redemptioner	3622
4922	Notice to be given	3622
4923	Content of notice.....	3623
4924	Payment of balance	3623
4925	Refund of overpayment	3623
CHAPTER 3	ENFORCEMENT OF TAX AFTER ERRONEOUS PROCEEDINGS.....	3623
Section 4946	Cancellation of tax; notice to last assessee.	3623
4947	Contents.....	3624
4948	Enforcement of tax.....	3624
CHAPTER 4	CANCELLATIONS	3625
ARTICLE 1	GENERALLY.....	3625
Section 4985	Tax collector’s or assessor’s errors	3625
4985.1	Transfer of auditor’s duties to tax collector	3626

CONTENTS (Contd)

	<i>Page</i>
4985.2 Delinquent penalties; cancellation	3626
4985.3 Relief from penalties	3626
4986 Cancellation of uncollected taxes; cancellation of taxes on property acquired by public agencies.....	3627
4986.1 Amount transferred to unsecured roll; limitation [Repealed].....	3629
4986.2 City taxes.....	3629
4986.3 Cancellation after assessment bond foreclosure.....	3629
4986.4 Veterans' Welfare Board property	3630
4986.5 Property distributed to State	3630
4986.6 Escheated property; tax sale	3631
4986.7 Acquisition of private property for public use [Repealed]	3631
4986.8 Tax collector's right to cancel small amounts.....	3631
4986.9 Court order to tax collector for tax information on property condemned; prorated taxes paid out of award; tax lienor need not be named a party; extinguished lien transferred to purchase price or award [Repealed]	3631
4987 Exempt property.....	3631
4988 Assessment by more than one county	3632
4990 Certification; cancellation	3632
4990.3 Quiet title suit	3632
4991 Erroneous sale or deed [Repealed]	3632
4991 Erroneous declaration of tax default	3632
4992 Cancellation of sale, etc., with tax [Repealed]	3632
4992 Erroneous declaration of power of sale.....	3632
4993 Canceling sale [Repealed].....	3633
4994 Canceling deed [Repealed].....	3633
ARTICLE 1.5 CANCELLATION OF ASSESSMENTS	
ON STATE-ASSESSED PROPERTY ..	3633
Section 5011 Grounds for cancellation.....	3633
5012 Entry in records.....	3633
5013 Notification to auditor	3633
5014 Duties of auditor	3633

CONTENTS (Contd)

		<i>Page</i>
ARTICLE 2	CANCELLATION OF ASSESSMENTS ON PUBLIC LANDS ON APPLICATION OF STATE LANDS COMMISSION.....	3634
Section 5026	Cancellation procedure	3634
5027	Effect on deed	3634
5028	Lands subject	3634
5029	Lands not subject	3634
ARTICLE 3	CANCELLATION OF ASSESSMENTS ON PUBLIC LANDS ON APPLICATION OF PROPERTY OWNER.....	3634
Section 5061	“Public land”	3634
5062	Cancellation procedure	3634
5063	Persons not subject.....	3635
5064	Effect on assessee.....	3635
ARTICLE 4	CANCELLATION OF TAX LIENS ON ANY SIXTEENTH OR THIRTY- SIXTH SECTION OR LEGAL SUBDIVISION THEREOF	3635
Section 5071	Procedure.....	3635
5072	Certificate of use	3635
5073	Notification	3635
ARTICLE 5	CANCELLATION OF TAXES ON EXEMPT PROPERTY	3635
Section 5081	Exempt property defined.....	3636
5082	Date of apportionment defined.....	3636
5082.1	Duties of public entities	3636
5083	Lien extinguished	3636
5084	Cancellation of taxes	3636
5085	Acquisition prior to beginning of fiscal year.....	3636
5086	Acquisition after beginning of fiscal year ..	3637
5086.1	Cancellation on date of apportionment	3637
5087	Optional payment plan.....	3637
5088	Taxes not transferred to unsecured roll	3637
5089	Cancellation of taxes if less than \$10.00....	3637
5090	Taxes not subject to cancellation	3638
5091	Required notice by public entity.....	3638

CONTENTS (Contd)

	<i>Page</i>
CHAPTER 5	REFUNDS..... 3639
ARTICLE 1	REFUNDS GENERALLY..... 3639
Section 5096	Refunds permissible 3639
5096.1	Refunds; annexation without detachment proceedings 3641
5096.3	Refunds to state or other public agencies [Repealed] 3642
5096.3	Tax credits; airlines 3642
5096.5	Refunds for retroactive exemptions 3644
5096.7	Refund to person paying the tax..... 3644
5096.8	Refund due to reduction in base year value 3645
5097	Conditions 3645
5097.01	Property on 1975-76 roll subject to escape assessment; claim for refund [Repealed] 3646
5097.02	Contents of claim for refund 3646
5097.03	Amount not in dispute not to be impounded..... 3647
5097.1	Refunds by tax collector [Repealed] 3647
5097.2	Limitations on refunds 3647
5098	Court actions; refunds..... 3647
5098.5	Court actions; interest..... 3648
5098.6	Court actions; refunds [Repealed] 3648
5099	Other revenue districts, etc..... 3648
5100	Settlement with State 3648
5101	Revenue districts' liability..... 3648
5102	Unclaimed amounts 3649
5103	Refunds by holders of tax certificates [Repealed] 3649
5103	Refunds as tax credits..... 3649
5104	Reduction in value refunds; payee..... 3649
5106	Recovery of penalties, interest and costs.... 3649
5107	"Taxes" defined..... 3649
5108	Interest payable [Renumbered]..... 3649
5108	Economic revitalization manufacturing property—property tax rebate 3650
ARTICLE 2	REFUND ACTIONS BY TAXPAYERS.... 3652
Section 5140	Action for refund..... 3652
5141	Action for refund; limitation 3653
5142	Necessity of refund claim 3653
5143	Scope of action for refund 3654
5144	Scope of judgment..... 3654

CONTENTS (Contd)

	<i>Page</i>
5145 Action for refund after payment of first installment.....	3655
5145.5 Action for refund after payment of first installment; escape assessments	3656
5146 Indispensable parties.....	3656
5147 Failure to return summons; dismissal	3657
5148 Action for refund; state-assessed property..	3658
5149 Counsel for defense of city [Repealed]	3659
5149 Precedence over other civil actions.....	3659
5149.5 Recovery of penalties, interest, and costs...	3660
ARTICLE 2.5 INTEREST ON REFUNDS	3660
Section 5150 Interest on taxes for which recovery allowed [Repealed]	3660
5150.5 Recovery of interest on penalties.....	3660
5151 Other interest payable.....	3660
5152 Attorney fees and costs.....	3662
5153 Impounded funds—interest payable.....	3662
ARTICLE 3 ACTION BY PUBLIC AGENCY	3663
Section 5161 Action by public agency	3663
ARTICLE 3.5 SCOPE OF JUDICIAL REVIEW OF ASSESSMENTS IN REFUND ACTIONS	3664
Section 5170 Scope of Judicial Review of Assessments in Refund Actions	3664
ARTICLE 4 DISPUTES OVER VALUATION OF STATE-ASSESSED PROPERTY.....	3664
Section 5180 Disputes over valuation of state-assessed property.....	3664

PART 9. CORRECTIONS, CANCELLATIONS, AND REFUNDS

- Chapter 1. General Provisions. §§ 4801-4808.
2. Corrections. §§ 4831-4925.
3. Enforcement of Tax After Erroneous Proceedings. §§ 4946-4948.
4. Cancellations. §§ 4985-5091.
5. Refunds. §§ 5096-5180.

CHAPTER 1. GENERAL PROVISIONS

- § 4801. "Taxes."
§ 4802. "District attorney."
§ 4803. Notice to Controller. [Repealed.]
§ 4804. Performance of acts by authorized county officers.
§ 4806. Prohibition of tax refunds.
§ 4807. Injunction.
§ 4808. Declaratory relief.

4801. **"Taxes."** As used in this part, "taxes" includes assessments collected at the same time and in the same manner as county taxes.

4802. **"District attorney."** As used in this part, "district attorney" means the civil legal adviser of the board of supervisors.

4803. **Notice to Controller.** [Repealed by Stats. 1998, Ch. 497 (SB 2233) in effect January 1, 1999.]

4804. **Performance of acts by authorized county officers.** The board of supervisors of any county may, by resolution, authorize the county administrative officer, or the county legal advisor, or the county auditor, or any other county officer, or a specified group of any county officers acting as a committee, to perform in its behalf any act required or authorized to be performed by the board of supervisors under this part, if such act is not imposed upon the board of supervisors by the Constitution.

The resolution may, at the request of the county legal advisor, provide for a waiver of the requirement for the written consent of the county legal advisor in any act performed under the provisions of this section.

The resolution shall enumerate those sections or subdivisions, or those portions of sections or subdivisions, to which the authorization is to apply, and shall specify administrative rules and procedures concerning any act performed under the authorization.

The resolution shall require that the county auditor record each act performed under the authorization.

The resolution may provide for review by the board of supervisors of any act performed under the authorization, or for periodic reports to the board of supervisors of any or all acts performed under the authorization, or both.

History.—Added by Stats. 1969, p. 282, in effect November 10, 1969.

4806. **Prohibition of tax refunds.** No refund shall be made under Chapter 5 of this part, nor shall any action be hereafter commenced nor shall any action heretofore commenced be further prosecuted for the recovery, of any tax voluntarily paid which was levied prior to January 1, 1939, claimed to be erroneous or illegal, by reason of errors, omissions or illegalities in

preparing, transmitting, computing, determining or fixing the budget or the tax rate or rates of any county, city and county, school district, municipal corporation or other public corporation, or political subdivision, in any case in which the taxes collected from such erroneous or illegal levy have been applied in the next or any succeeding fiscal year to reduce the tax levy for such year, or have been expended, appropriated, or applied for a public purpose.

For the purposes of this section, the mere payment of a tax under protest shall not be deemed to constitute such payment an involuntary payment.

Construction.—Constitutionality.—A tax is paid voluntarily within the meaning of this section unless there is “some compulsion or coercion attending its assertion, which controls the conduct of the party making the payment.” Taxes so paid cannot be recovered in the absence of statutory authorization, and although in California such authorization has been provided by Section 5096 and former Section 5136, it may be withdrawn at any time without the violation of constitutional rights. *Southern Service Co., Ltd., v. Los Angeles County*, 15 Cal.2d 1.

As to what constitutes an involuntary payment, see also *Cooper v. Chamberlin*, 78 Cal. 450; *Gill v. City of Oakland*, 124 Cal. 335; *Palomares Land Co. v. Los Angeles County*, 146 Cal. 530; *Hanford Gas Etc. Co. v. Hanford*, 163 Cal. 108; *Spencer v. City of Los Angeles*, 180 Cal. 103; *Flynn v. San Francisco*, 18 Cal.2d 210; *Home Telephone & Telegraph Co. v. City of Los Angeles*, 40 Cal.App. 492.

4807. Injunction. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected. In the case of a collection of taxes pursuant to a bankruptcy proceeding, the county may request a reasonable amount of attorney’s fees.

History.—Added by Stats. 1977, Ch. 539 in effect January 1, 1978. Stats. 1998, Ch. 497 (SB 2233), in effect January 1, 1999, added the second sentence of the first paragraph.

Construction.—Taxpayers challenging certain assessment practices that began after the adoption of Article XIII A of the Constitution were not entitled to relief by either injunction or mandate since they had an adequate remedy at law, a claim for refund followed by a suit for refund, and since the section prohibits the issuance of an injunction or writ of mandate to prevent or enjoin the collection of property taxes. *Schoderbeck v. Carlson*, 152 Cal.App.3d 1027. Taxpayers’ actions to have personal property tax liens declared invalid on the ground they were for taxes more than ten years old at the time they were filed are barred by this section since taxpayers, in effect, sought a prepayment adjudication of the county’s right to collect tax that would have effectively prevented the collection of a tax. Section 5140 provided the taxpayers with an adequate remedy for their claims. *McKendry v. Kern County*, 180 Cal.App.3d 1165. Taxpayers’ mandamus proceeding to correct alleged assessment inequalities in Article XIII A of the Constitution assessments is barred by this section, notwithstanding their disclaimer of any right to tax refunds. Although they disclaimed rights to refunds, by seeking to lower their assessments the taxpayers were seeking to avoid the future payment of taxes, which this section forbids, *Merced County Taxpayers’ Assn. v. Cardella*, *Merced County Taxpayers’ Assn. v. Merced County*, 218 Cal.App.3d 396. Plaintiffs’ mandamus proceeding to direct county to grant a property tax exemption for 200 homeowners on their possessory interests in the leased land underlying the homes they owned is barred by this section, notwithstanding the interests of the nontaxpaying University of California and its campus housing authority. The statutory command is clear and admits of no exceptions. *Connolly v. Orange County*, 1 Cal.4th 1105.

Where special taxes remain unpaid, a trial court has no jurisdiction to offset the amount of unpaid taxes based on a plaintiff’s failure to timely perform its contractual obligations since, under this section, any legal action or defense seeking prepayment adjudication that would effectively prevent the collection of a tax is barred. *Community Facilities District v. Harvill*, 74 Cal. App. 4th 876. Where special taxes remain unpaid, any legal action or affirmative defenses, such as lack or failure of consideration, seeking prepayment adjudication are barred as a matter of law by this section. *Riverside County Community Facilities District v. Bainbridge* 17, 77 Cal.App.4th 644.

4808. Declaratory relief. Notwithstanding any provision of law to the contrary, any taxpayer may, no later than 30 days after the delinquency date of a property tax bill or any installment thereof, seek declaratory relief in the superior court in the county in which the property is located alleging that the locally assessed property taxes have been illegally or unconstitutionally assessed or collected or are to be so assessed or collected.

Any action alleging an illegal or unconstitutional method of valuation or similar matter shall name as respondent the assessor of the county in which the property is located. An action alleging an unconstitutional or illegal tax rate shall name as respondent the auditor-controller of such county. In the event the action involves the validity of a rule or regulation adopted by the State Board of Equalization, the board shall be named as a respondent. The relief granted pursuant to this section shall be limited to a declaration that the taxes assessed or collected or to be assessed or collected are unconstitutional or otherwise legally invalid.

This section shall not be interpreted to allow a taxpayer to postpone payment of property taxes pending the decision of the court. All assessment and collection provisions of this division shall continue to apply to properties affected by this section.

This section shall be applicable only in instances where the alleged illegal or unconstitutional assessment or collection occurs as the direct result of a change in administrative regulations or statutory or constitutional law that became effective not more than 12 months prior to the date the action is initiated by the taxpayer.

The procedure for obtaining a declaratory relief judgment under this section shall be the same as that used to obtain a writ of mandate.

History.—Added by Stats. 1981, Ch. 550, in effect January 1, 1982.

Note.—Section 3 of Stats. 1981, Ch. 550, provided it is the intent of the Legislature that actions pursuant to Section 4808 of the Revenue and Taxation Code be quickly heard and determined in both the trial court and the appellate courts in order that final tax liabilities may be determined at the earliest possible moment. Section 4 provided if any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections, parts, clauses, and phrases shall not be affected but will remain in full force and effect.

CHAPTER 2. CORRECTIONS

- Article 1. Generally. §§ 4831-4845.
- 2. Errors on the Board Roll. §§ 4876-4880.
- 3. Incorrect Application of Payments. §§ 4911-4916.
- 4. Incorrect Application of Payment on Redemption. §§ 4920-4925.

Article 1. Generally

- § 4831. Incorrect entries; transfers to unsecured roll.
- § 4831.5. Correction of errors caused by the assessee.
- § 4832. Auditor's errors.
- § 4832.1. Cancellation when auditor error less than five dollars.
- § 4833. Incorrect assessments; in-lieu payment amounts. [Repealed.]
- § 4833.1. Relief of penalties.
- § 4834. Correction procedure.
- § 4834.5. Clerical errors.
- § 4835. Decrease.
- § 4836. Increase; notice.
- § 4836.5. Increase; tax rate applied.
- § 4837. Entry and accounting.
- § 4837.5. Payment over three years. [Repealed.]
- § 4837.5. Errors; payment over four years.
- § 4838. Public calamity.
- § 4839. Notice of power to sell tax-defaulted property, clerical errors. [Repealed.]
- § 4839.1. Tax-defaulted property erroneously redeclared tax defaulted.
- § 4839.2. Board of supervisors' approval of sale.
- § 4840. Taxes mistakenly on secured roll.

- § 4841. Correction in publication.
- § 4842. Manner of publication.
- § 4843. "Corrections" to 1978-79 assessment roll. [Repealed.]
- § 4844. "Corrections" to 1979-80 assessment roll. [Repealed.]
- § 4845. "Corrections" to 1980-81 assessment roll. [Repealed.]

4831. Incorrect entries; transfers to unsecured roll. (a) Any error resulting in incorrect entries on the roll may be corrected under this article. The correction may be made at any time after the roll is delivered to the auditor but, except as provided in subdivision (b), shall be made within four years after the making of the assessment that is being corrected. This section does not apply to either of the following:

(1) Except as provided in subdivision (b), errors involving the exercise of value judgments.

(2) Escape assessments caused by the assessee's failure to report the information required by Article 2 (commencing with Section 441) of Chapter 3 of Part 2.

If any error referred to in this subdivision is discovered as the result of an audit of a taxpayer's books and records, that error may be corrected at any time prior to the expiration of six months after the completion of the audit.

(b) Any error or omission involving the exercise of a value judgment that arises solely from a failure to reflect a decline in the taxable value of real property as required by paragraph (2) of subdivision (a) of Section 51 shall be corrected within one year after the making of the assessment that is being corrected.

(c) Taxes that are not a lien or charge on the property assessed may be transferred from the secured roll to the unsecured roll of the corresponding year by the county auditor. These taxes shall be collected in the same manner as other delinquent taxes on the unsecured roll and shall be subject to delinquent penalties in the same manner as taxes transferred to the unsecured roll under Section 5090. The statute of limitations for the collection of those taxes shall commence to run from the date of transfer.

History.—Stats. 1967, p. 1488, in effect November 8, 1967, inserted "or other errors . . . intended by the assessor" after "exercise of"; and substituted "prior to the expiration . . . is being corrected" after "clerk of the county board and" in the first sentence and added all the rest. Stats. 1970, p. 355, in effect November 23, 1970, added the fifth paragraph. Stats. 1971, p. 3524, in effect March 4, 1972, substituted "four" for "three" in the first sentence of the first paragraph. Stats. 1973, Ch. 1190, p. 2504, in effect January 1, 1974, added "an inspection of the property, the records of assessee, or from" after "ascertained from", and "or which result in the assessment of nonexistent improvements or personal property" before "may be corrected" in the first paragraph; deleted former second, third and fourth paragraphs relating to a transfer to or encumbrance by a bona fide purchaser for value of property for which a correction increasing assessed value is made; added present second paragraph; and retained present last paragraph unchanged. Stats. 1974, Ch. 284, p. 549, in effect January 1, 1975, added the subdivision letters, and added subdivision (d). Stats. 1978, Ch. 732, in effect January 1, 1979, added the last sentence of subdivision (a). Stats. 1979, Ch. 516, in effect January 1, 1980, restated subdivision (a); deleted former subdivision (b); relettered former subdivision (c) as subdivision (b); substituted "are not" for "do not create, impose or constitute", and "their legal counsel." for "the district attorney" in the first sentence of subdivision (b), and substituted "these taxes" for "and" in the second sentence of subdivision (b); and relettered former subdivision (d) as subdivision (c). Stats. 1980, Ch. 411, in effect July 11, 1980, operative January 1, 1981, substituted "5090" for "4986" after "Section" in the second sentence of subdivision (b). Stats. 1981, Ch. 261, in effect January 1, 1981, substituted "incorrect entries" for "the entry of incorrect values" before "on the roll" in the first sentence of subdivision (a). Stats. 1983, Ch. 1224, in effect January 1, 1984, deleted "of the assessor" after "error" in the first sentence, added "either of" after "apply to" in the third sentence, and deleted "or" after "judgments" in subsection (1) of the first paragraph, and substituted "error referred to in this subdivision" for "such error" after "any" and substituted "that" for "such" after "records," in the second paragraph of subdivision (a); and substituted "those" for "such" after "collection of" in the third sentence of subdivision (b). Stats. 1988, Ch. 830, in effect January 1, 1989, deleted "(c) Any liens created pursuant to this section prior to the effective date of Chapter 1190 of the Statutes of 1973 (January 1, 1974), shall have the force, effect and priority of a judgment lien, and shall continue for 10 years from the time of recording of the certificate authorized under this section unless sooner released or otherwise discharged." Stats. 1991,

Ch. 532, in effect January 1, 1992, deleted "on order of the board of supervisors with the written consent of their legal counsel" after "county auditor" in the first sentence of subdivision (b). Stats. 1995, Ch. 164, in effect July 24, 1995, added ", except as provided in subdivision (b)," after "auditor but" in the second sentence of subdivision (a), and substituted "Except as provided in subdivision (b), errors" for "Errors" in paragraph (1) of subdivision (a); added subdivision (b); and relettered former subdivision (b) as (c). Stats. 1995, Ch. 527, in effect January 1, 1996, added ", including an assessor's . . . value of property" after "this article" in the first sentence, and substituted "that" for "which" after "the assessment" and added ", except that an . . . the affected roll" after "being corrected" in the second sentence in subdivision (a). Stats. 1996, Ch. 1087, in effect January 1, 1997, deleted ", including an assessor's failure to apply subdivision (b) of Section 51, in any case in which that subdivision applies, to determine the taxable value of property" after "under this article" in the first sentence and deleted ", except that an assessor's failure, as described in the preceding sentence, to apply subdivision (b) of Section 51 shall be corrected within one year of the delivery of the affected roll" after "that is being corrected" in the second sentence of subdivision (a); substituted "paragraph (2) of subdivision (a) of Section 51 shall be" for "subdivision (b) of Section 51, may be" after "as required by" in subdivision (b); and substituted "that" for "which" before "are not a lien" in the first sentence of subdivision (c).

Construction.—Former subdivision (a) (Stats. 1974, Ch. 284) was intended to provide the assessor with a simple and efficient mechanism for correcting clerical defects or errors discovered after the assessment roll had been delivered to the auditor, provided it could be ascertained from an inspection of certain designated sources that such an error had in fact occurred. An increased assessment pursuant thereto was not authorized where no discrepancy between the original assessment and the assessor's intent could be ascertained from such sources, in that the evidence indicated only that the original assessment was based upon capital depreciation figures submitted by plaintiff rather than the assessor's initial figures and that all such figures were accurate in every respect. *United States Borax & Chemical Corp. v. Mitchell*, 27 Cal.3d 84.

Improper exemption.—The erroneous entry of an exemption on the assessment roll may be corrected under this section. *Pasadena University v. Los Angeles County*, 190 Cal. 786.

Mandamus.—Action under this article by the county board and the district attorney may be compelled by a writ of mandate when property which is exempt from taxation has been erroneously assessed. *State Land Settlement Board v. Henderson*, 197 Cal. 470.

4831.5. Correction of errors caused by the assessee. When it can be ascertained by the assessor from an audit of an assessee's books of account or other papers that there has been a defect of description or clerical error of the assessee in his property statement or in other information or records furnished to the assessor which caused the assessor to assess taxable tangible property which should not have been assessed or to assess it at a substantially higher valuation than he would have entered on the roll if the information had been correctly furnished to the assessor, the error on the roll may be corrected under this article at any time after the roll is delivered to the auditor by the clerk of the county board and within the time allowed for assessing property which has escaped assessment as provided in Sections 532 and 532.1. The extent and character of the change to be made on the roll shall be certified to the auditor by the assessor.

History.—Added by Stats. 1961, p. 1578, in effect September 15, 1961. Stats. 1970, p. 390, in effect November 23, 1970, substituted "assesses taxable tangible property", for "assess personal property" in the first sentence of the first paragraph. Stats. 1983, Ch. 1224, in effect January 1, 1984, substituted "and 532.1" for "of this code" after "532" in the first sentence.

4832. Auditor's errors. Clerical errors of the auditor on the roll may be corrected under this article at any time before the report is sent to the Controller pursuant to Section 3440, or the summary statement is sent to the Controller pursuant to Section 3446, showing in detail the tax-defaulted property.

History.—Stats. 1967, p. 3192, in effect November 8, 1967, inserted "pursuant to Section 3440 . . . pursuant to Section 3446" after "Controller". Stats. 1985, Ch. 316, effective January 1, 1986, substituted "the tax-defaulted property" for "each sale to the state for taxes" after "in detail".

4832.1. Cancellation when auditor error less than five dollars. If the amount of any tax or special assessment is understated on the roll by five dollars (\$5) or less due to clerical error of the auditor, the amount by which such tax or special assessment is understated may be canceled by the auditor.

After cancellation by the auditor, the amount appearing on the roll shall in each instance be deemed the correct amount of that tax or special assessment for all purposes and upon payment of that amount the tax collector shall show the tax or special assessment as paid in full. The auditor need not note the cancellation on the roll. Whenever a portion of the rate of any tax or special assessment is canceled in the manner provided by this section, written consent of any city attorney shall not be required.

History.—Added by Stats. 1973, Ch. 427, p. 896, in effect January 1, 1974. Stats. 1991, Ch. 532, in effect January 1, 1992, substituted “the auditor” for “order of the board of supervisors with the approval of the county legal adviser” after “canceled by” in the first sentence, and substituted “auditor” for “board” after “cancellation by the” and substituted “that” for “such” after “of” twice in the second sentence.

4833. Incorrect assessments; in-lieu payment amounts. [Repealed by Stats. 1989, Ch. 978, in effect September 29, 1989, operative January 1, 1995.]

4833.1. Relief of penalties. (a) Notwithstanding Section 2610.5, in the case of corrections made to the roll pursuant to Section 1646.1, where a taxpayer has failed to pay an amount of tax computed upon assessed value that is the subject of a pending assessment appeal, the relief from penalties shall apply only to the difference between the county board’s final determination of value and the value on the assessment roll for the fiscal year covered by the application. For purposes of this section, “county board” means either a county board of supervisors that meets as a county board of equalization or an assessment appeals board.

(b) The county board shall cause notice of the requirements of this section to be mailed to each taxpayer or to be presented to each taxpayer upon filing an application for reduction in assessment with the county board if that taxpayer will be impacted by the penalty provisions of this section.

(c) For any taxpayer who has paid at least 80 percent of the amount of tax finally determined due by the county board within 60 days of mailing or presentation of the notice prescribed in subdivision (b), the tax collector shall accept payment of the balance of the tax due without penalties or interest.

(d) This section shall apply only to those properties upon which an application for reduction in assessment is pending before the county board on the effective date of the act adding this section or those applications for reduction in assessment that are filed with the county board after the effective date of the act adding this section.

(e) This section shall only become operative if the board of supervisors of a county, with the approval of the county’s tax collector and the county’s auditor, adopts a resolution or ordinance approving this section.

History.—Added by Stats. 1994, Ch. 856, in effect September 27, 1994.

4834. Correction procedure. Corrections authorized under this article shall be made by the auditor.

History.—Stats. 1943, p. 1940, in effect August 4, 1943, substituted “delinquent roll” for “delinquent list.” Stats. 1970, p. 356, in effect November 23, 1970, added the second paragraph. Stats. 1973, Ch. 1190, p. 2504, in effect January 1, 1974, deleted “on the roll and delinquent roll” after “made”, and a second paragraph relating to a correction which increases the taxes on property sold to the state. Stats. 1991, Ch. 532, in effect January 1, 1992, deleted “, with the written consent of the county legal adviser” after “the auditor”.

4834.5. Clerical errors. Clerical errors on the delinquent roll may be corrected by the tax collector at any time before the county has disposed of the property. This section shall be construed as an additional procedure to that set forth in Sections 4946 to 4948, inclusive.

History.—Added by Stats. 1947, p. 688, in effect September 19, 1947. Stats. 1953, p. 2104, in effect September 9, 1953, added “or of the redemptioner.” Stats. 1959, p. 2482, in effect September 18, 1959, deleted “and of the assessee or of the redemptioner,” after “district attorney” in the first sentence. Stats. 1974, Ch. 1101, p. 2347, in effect January 1, 1975, substituted “tax collector” for “redemption officer” in the first sentence. Stats. 1985, Ch. 316, effective January 1, 1986, substituted “county” for “state” after “before the” in the first sentence; deleted the former second sentence, which provided that “If the property has been tax deeded, a new or amended deed to the state shall be issued pursuant to Section 4839”; and deleted “, of this code” after “inclusive” in the second sentence. Stats. 1991, Ch. 532, in effect January 1, 1992, deleted “with the written consent of the district attorney,” after “tax collector” in the first sentence.

4835. Decrease. If the correction will decrease the amount of unpaid taxes, the consent of the board of supervisors is necessary to the correction.

History.—Stats. 1980, Ch. 411, in effect July 11, 1980, operative January 1, 1981, substituted “unpaid taxes” for “taxes due”.

4836. Increase; notice. If the correction will increase the amount of unpaid taxes, the assessor shall notify the assessee of the procedure for obtaining review by the county board under Section 1605 and the procedure for applying for cancellation under Section 4986.

History.—Stats. 1980, Ch. 1081, in effect September 26, 1980, substituted “unpaid taxes” for “taxes due” and “assessor shall notify the assessee of the procedure for obtaining review by the county board under Section 1605 and the procedure for applying for cancellation under Section 4986” for “board of supervisors shall give the assessee opportunity for a hearing after at least five days notice at which he may present his objections to the change”, and deleted the former second sentence.

4836.5. Increase; tax rate applied. In the event any correction authorized under this article has the effect of increasing the assessment, the auditor shall apply a tax rate to that increase at whatever tax rate was in existence in the year in which the error was made and shall apply the assessment ratio that was in existence in the year in which the error was made. All increased amounts of taxes shall be entered on the roll prepared or being prepared for the current assessment year and shall thereafter be treated and collected like other taxes on the roll. After the lien date, and with the approval of the tax collector, the increase may be added to the current roll being collected. However, if the correction affects taxes on the secured roll for any year and subsequent to the entry of the original assessment but prior to the date of the correction the real property on which the taxes constitute a lien has been transferred or conveyed to a bona fide purchaser for value or becomes subject to a bona fide encumbrance for value, the increased amount of taxes shall not create, impose or constitute a lien on the real property and shall be entered on the unsecured roll in the name of the assessee at the time the error was made and shall thereafter be treated and collected like other taxes on the roll.

The entry on the unsecured roll shall be followed with “Correction to account or Parcel Number ____ for the 19__ assessment year pursuant to Section(s) ____ of the Revenue and Taxation Code.” The foregoing entry may be made on a document separate from the roll if reference is made on the roll to the document wherein the entry is made.

History.—Added by Stats. 1967, p. 2071, in effect November 8, 1967. Stats. 1968, p. 2144, in effect November 13, 1968 substituted “shall” for “may” following “supervisors”. Stats. 1973, Ch. 1190, p. 2504, in effect January 1, 1974, substituted “In the event any correction authorized under this article has the effect of increasing the assessment” for

"Whenever correction of any clerical error increases the assessment" in the first sentence, and added the remaining provisions. Stats. 1974, Ch. 284, p. 549, in effect January 1, 1975, added the balance of the second sentence of subsection (a) after "judgment lien". Stats. 1976, Ch. 156, p. 254, in effect January 1, 1977, substituted the balance of the second sentence of the first paragraph after "such real property" for "but shall be collected as follows" and former subsections (a) and (b). Stats. 1978, Ch. 1207, in effect January 1, 1979, operative January 1, 1981, added "and shall apply the assessment ratio that was in existence in the year in which the error was made" at the end of the first sentence of the first paragraph. Stats. 1981, Ch. 714, in effect January 1, 1982, substituted "the" for "said" before the second "roll", substituted "the" for "such" in several places in the proviso, and added "and" between "real property" and "shall" in the second sentence of the first paragraph. Stats. 1991, Ch. 532, in effect January 1, 1992, substituted "auditor" for "board of supervisors" after "the", and substituted "that" for "such" after "a tax rate to" in the first sentence, substituted a period for "; provided, that" after "taxes on the roll" in the second sentence, and substituted "However" for "however, that" before "if the correction" in the third sentence of the first paragraph. Stats. 1997, Ch. 546 (SB 1107), in effect January 1, 1998, added the third sentence of the first paragraph commencing with "After the" and substituted "19 -" for "19-19" after "for the" in the first sentence of the second paragraph.

4837. Entry and accounting. The date and nature of the correction shall be entered on the roll on which the error was made or on the delinquent abstract prepared therefrom opposite the description of property; provided, however, that where the correction is to a prior year's roll and results in an increase in taxes, if the delinquent tax abstract prepared from such roll does not list that parcel or account, the correctional entry to the delinquent abstract may be made by insertion therein of a new sheet containing the information required to be set forth by Section 4372 and the date and nature of the correction. The written authority for the correction shall be filled and preserved by the auditor as a public record. The auditor shall make any necessary changes in accounts with the tax collector.

History.—Stats. 1943, p. 1940, in effect August 4, 1943, substituted "description of property" for "assessment." Stats. 1973, Ch. 1190, p. 2505, in effect January 1, 1974, added "on which the error . . . therefrom" before "opposite" and the language beginning with "provided" in the first sentence; the second and third sentences were retained from the prior section without substantive change.

4837.5. Payment over three years. [Repealed by Stats. 1983, Ch. 1224, in effect January 1, 1984.]

4837.5. Errors; payment over four years. (a) Notwithstanding any other provision of law, taxes due, whether secured or unsecured, on escape assessments for prior fiscal years may be paid over a four-year period at the option of the assessee if: (1) the additional tax is over five hundred dollars (\$500), and (2) a written request for installment payment is filed by the assessee with the tax collector prior to the time the second installment of taxes on the secured roll becomes delinquent, or by the last day of the month following the month in which the tax bill is mailed, whichever is later. The tax collector shall include with the property tax bill a notice of the payment provisions of this section. For unsecured taxes, the written request for installment payment shall be filed with the tax collector prior to the date on which those taxes become delinquent.

(b) If payment by installments is requested, 20 percent or more of the tax shall be paid no later than the deadline for filing the written request. The current taxes and prior year taxes with penalties and costs thereon shall be paid with or prior to the initial installment payment. In each succeeding fiscal year, the assessee shall pay, before the delinquency date of the second installment of current taxes on the secured roll, all current year taxes, and a sum at least sufficient to reduce the outstanding balance of the tax by 20 percent of the original amount. In the case of unsecured taxes, the required annual installment shall be paid on or before August 31.

(c) Interest at the rate of three-fourths of 1 percent per month, starting with the month following the date of the deadline for filing the written request, shall be applied to the outstanding balance, on the first day of the month, if the escape or underassessment was due, in whole or in part, to the error, omission, or other fault of the assessee. If the first day of any month falls on a Saturday, Sunday, or legal holiday, the next additional three-fourths of one percent of interest shall be applied to the outstanding balance on the next business day.

(d) No additional penalties shall be charged as long as installment payments are made timely; and, in the case of secured taxes, as long as all payments are made timely, an affidavit regarding the property shall not be published pursuant to Section 3371.

(e) If any installment is not paid timely, or if the property on the secured roll becomes tax defaulted, or if the property changes ownership, or if taxes for the property on the unsecured roll are not paid before becoming delinquent, the balance of the tax remaining to be paid shall immediately become due and payable, and no further installment payments for that escape assessment or correction shall be authorized. The tax collector shall inform the auditor of the defaulted, off-roll installment plan and of the delinquent amount remaining unpaid. With regard to property on the secured roll that has not become tax defaulted, or property on the unsecured roll that has not become delinquent, in the event the payment is missed at the time the second or subsequent installment is due and the assessee or agent of the assessee can, by substantial evidence, convince the tax collector that the payment was not made through any fault of the assessee, the tax collector may reinstate the account upon receipt of a payment in an amount reflecting the installment plus interest under subdivision (c) to the date of reinstatement, provided that the payment is physically received by the tax collector prior to the time the property becomes tax defaulted or prior to June 30 of the current fiscal year, whichever occurs earlier.

(f) The auditor shall add the unpaid balance, plus all penalties and costs thereon, to the current roll, adjust the tax collector's charge accordingly, and the remaining balance of the tax shall become subject to all of the provisions of this division applicable to delinquent taxes.

(g) The tax collector shall maintain records listing the current status of all the installment accounts authorized under this section. The status of each installment account shall be entered on the current roll and the tax collector may file for record with the county recorder a certificate pursuant to Section 2191.3.

(h) When the installment account is paid in full before 5 p.m. on June 30 of the year in which the account has become defaulted and the tax collector has filed for record a certificate of lien, the tax collector shall also file for record a release of that lien. Where the account is not paid in full until after

June 30 of the year in which the account became defaulted, the filings of the certificates of lien and release of lien shall be subject to recording fees charged to the taxpayer.

(i) The tax collector may establish a fee for the actual cost of processing a request to pay escaped assessments in installments.

History.—Added by Stats. 1983, Ch. 1224, in effect January 1, 1984. Stats. 1984, Ch. 866, in effect January 1, 1985, added the second sentence and added “all current year taxes, and” after “secured roll” in the third sentence of the second paragraph; and substituted “sold . . . ownership” for “tax-deeded” in the second sentence of the third paragraph. Stats. 1985, Ch. 316, effective January 1, 1986, substituted “tax defaulted” for “sold to the state” after “roll becomes” in the third paragraph. Stats. 1988, Ch. 830, in effect January 1, 1989, added “, whether secured or unsecured,” before “on escape assessments” in the first sentence of the first paragraph. Stats. 1990, Ch. 126, in effect June 11, 1990, deleted “(a)” before first paragraph, added “or more” after “20 percent” in the first sentence in the second paragraph, added “; and, in the case . . . Section 3371” after “installment payments are made timely” in the first sentence of the third paragraph, created new fourth paragraph with the former second sentence of the third paragraph, added “and” after “payable,” in the first sentence and added the second sentence in the fourth paragraph; created new fifth paragraph by adding “The auditor . . . accordingly,” before “and the remaining”, substituted “. The status” for “and the fact”, after “section” to create new second sentence, and added “and the tax . . . Section 2191.3” after “current roll” in the second sentence in the sixth paragraph, and added the seventh paragraph. Stats. 1990, Ch. 992, in effect January 1, 1991, substituted “five” for “one” after “over” and substituted “(\$500)” for “(\$100)” after “dollars” in the first sentence in the first paragraph. Stats. 1991, Ch. 532, in effect January 1, 1992, added the third sentence in the first paragraph; added the fourth sentence in the second paragraph; substituted “before 5 p.m. on June 30 of the year in which the account has become defaulted” for “or placed on the tax rolls due to a defaulted payment plan” after “full”, and added “that” after “release of” in the first sentence, and substituted “where the amount is not paid in full until after June 30 of the year in which the account became defaulted, the” for “The” before “filings”, deleted “not” after “shall”, and added “charged to the taxpayer” after “fees” in the second sentence of the seventh paragraph. Stats. 1995, Ch. 498, in effect January 1, 1996, deleted “, where the error causing the escape assessment was not that of the assessee, or taxes due because of the correction of any assessor’s error for prior fiscal years under this article, where that error was made without fault on the part of the assessee,” after “fiscal years”, and substituted “(a)” and “(b)” for “(1)” and “(2)”, respectively, in the first sentence of the first paragraph; and substituted “as” for “so” after “shall be charged” and after “secured taxes,” in the third paragraph. Stats. 1996, Ch. 171, in effect July 17, 1996, lettered former first, second, third, fourth, fifth, sixth, and seventh paragraphs as subdivisions (a), (b), (d), (e), (f), (g), and (h), respectively; substituted “(1)” and “(2)” for “(a)” and “(b)”, respectively, in the first sentence of the former first paragraph; added subdivision (c); and substituted “No additional penalties” for “No penalties” before “shall be charged” in subdivision (d). Stats. 1997, Ch. 546 (SB 1107), in effect January 1, 1998, added subdivision (i). Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, substituted “starting with the month following” for “calculated from” after “month”, substituted “request, shall be applied” for “request to the date that payment is due, shall be added” after “written”, substituted “on the first day of the month, if” for “if the tax collector determines that” after “balance”, and added “other” after “or” in the first sentence, and added the second sentence to subdivision (c); and added the third sentence to subdivision (e).

4838. Public calamity. If the roll of any taxing agency in course of preparation is lost or destroyed because of public calamity and is reconstructed from available data, at any time before the declaration of default the assessor may correct any erroneous assessment. The assessor shall:

(a) Send certified notices of the correction to the tax collector, the auditor, and the Controller.

(b) Enter opposite the description of property on the roll the date and nature of the correction.

History.—Stats. 1943, p. 1940, in effect August 4, 1943, substituted “description of property” for “assessment” in subdivision (b). Stats. 1985, Ch. 316, effective January 1, 1986, substituted “declaration of default” for “sale to the State” after “before the” in the first paragraph.

4839. Notice of power to sell tax-defaulted property, clerical errors. [Repealed by Stats. 1998, Ch. 497 (SB 2233), in effect January 1, 1999.]

4839.1. Tax-defaulted property erroneously redeclared tax defaulted. If tax-defaulted property has been erroneously redeclared tax defaulted, or if property subject to a power of sale pursuant to Section 3691 has been erroneously redeclared tax defaulted or subject to a power of sale, the erroneous declarations may be canceled on the order of the board of supervisors.

History.—Added by Stats. 1955, p. 840, in effect September 7, 1955, constituting provisions formerly in Section 4839 but deleting reference to cancellation by the tax collector. Stats. 1985, Ch. 316, effective January 1, 1986, substituted “tax-defaulted” for “tax-sold” after “if”, substituted “redeclared tax defaulted” for “resold to the State” after “erroneously”, substituted “if” for “tax-deeded” after “or”, added “subject to a power of sale pursuant to Section 3691” after “property”, substituted “redeclared tax defaulted or subject to a power of sale” for “resold or redeeded to the State” after “erroneously”, and substituted “declarations” for “sale or deed” after “erroneous”.

Statutory authorization not required.—When a tax deed is defective because its recitals do not conform to the facts, the tax collector has power, without special statutory authorization, to execute a second and corrected deed. *Webster v. Somer*, 159 Cal. 459. See also *Morton v. Sloan*, 96 Cal.App. 747, wherein the court declared that the tax collector may be compelled by mandamus to issue a corrected deed.

Presumption of proper authorization, prior law.—If an order of the board of supervisors as provided in this section is necessary to authorize the tax collector to execute a corrected tax deed, it will be presumed that such an order was made in the absence of any showing to the contrary. *Fox v. Townsend*, 152 Cal. 51.

4839.2. Board of supervisors’ approval of sale. On receipt of the notice described in Section 3698, the board of supervisors shall by resolution either approve or disapprove the proposed sale and shall transmit a certified copy of the resolution to the tax collector within five days after its action. Failure to adopt or transmit the resolution within the prescribed times shall not affect the validity of a sale approved by the board of supervisors.

History.—Added by Stats. 1996, Ch. 800, in effect January 1, 1997.

4840. Taxes mistakenly on secured roll. On receipt of satisfactory, verified, written evidence that taxes have been entered on the secured roll as a lien on real property on which they are not legally a lien, the assessor shall transmit the evidence and his or her cancellation to the auditor. On direction of the board of supervisors, the auditor shall cancel the entry as a lien on that real property and reenter such taxes as follows:

(a) If the assessee has real property sufficient, in the assessor’s opinion, to secure the payment of the taxes, as a lien on real property.

(b) Where there is not sufficient real property to secure the taxes:

(1) If it is state-assessed property, on the secured roll.

(2) In all other cases, on the unsecured roll.

History.—Stats. 1973, Ch. 1190, p. 2505, in effect January 1, 1974, deleted “on personal property or possessory interests” after “taxes” in the first sentence, substituted “such taxes” for “it” after “reenter” in the second sentence, and deleted “this” after “lien on” in subdivision (a). Stats. 1991, Ch. 532, in effect January 1, 1992, added “or her” after “his” and substituted “cancellation to the auditor” for “statement of the facts to the board of supervisors” after “her” in the first sentence of the first paragraph.

4841. Correction in publication. If any error or defect has been carried, into any publication, the publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

4842. Manner of publication. The publication shall be made in the same manner as the original publication, and for not less than one week.

4843. “Corrections” to 1978–79 assessment roll. [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

4844. “Corrections” to 1979–80 assessment roll. [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

4845. “Corrections” to 1980–81 assessment roll. [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

Article 2. Errors on the Board Roll

- § 4876. Board's errors.
- § 4876.5. Correction of errors caused by the assessee.
- § 4877. Increase; notice.
- § 4878. Entry by board.
- § 4879. Transmission.
- § 4880. Entry locally.

4876. Board's errors. When it can be ascertained from any roll or from any papers of the board what was intended or what should have been assessed, defects in description or form or clerical errors of the board in assessing state-assessed property or other errors of the board not involving the exercise of judgment as to value which result in the entry on the roll of assessed values other than those intended by the board may be corrected by the board under this article at any time within four years after the assessment was made or within the period for which a waiver is given pursuant to Section 868.

History.—Stats. 1968, p. 2001, in effect November 13, 1968, added the clause relating to errors not involving the exercise of judgment as to value. Stats. 1971, p. 3525, in effect March 4, 1972, substituted "four" for "two" in the first sentence. Stats. 1983, Ch. 1281, in effect September 30, 1983, added "or within . . . Section 868" after "was made".

4876.5. Correction of errors caused by the assessee. When it can be ascertained by the board from an audit of an assessee's books of account or other papers that the property of the assessee was incorrectly valued or misclassified for any cause, then to the extent that this error caused the board to assess taxable tangible property which should not have been assessed or to assess it at a higher valuation than the board would have entered on the roll if the error had not occurred, the roll may be corrected under this article at any time within four years after the assessment was made or within the period for which a waiver is given pursuant to Section 868.

History.—Added by Stats. 1961, p. 1578, in effect September 15, 1961. Stats. 1971, p. 3525, in effect March 4, 1972, substituted "four" for "two" in the first sentence. Stats. 1973, Ch. 709, p. 1284, in effect January 1, 1974, substituted "taxable tangible" for "personal" in modification of "property". Stats. 1982, Ch. 1465, in effect January 1, 1983, substituted "the property . . . this error" for "there has been a defect of description or clerical error of the assessee in his property statement or in other information or records furnished to the board which" after "papers that," deleted "substantially" before "higher," and substituted "the error had not occurred," for "information had been correctly furnished to the board, the error on" after "if the". Stats. 1983, Ch. 1281, in effect September 30, 1983, added "or within . . . Section 868" after "was made".

4877. Increase; notice. If the correction will increase the amount of taxes due, the board shall give the assessee opportunity for a hearing after at least five days notice at which he may present his objections to the change. The board's decision is final.

4878. Entry by board. The date and nature of the correction shall be entered in the records of the board.

4879. Transmission. The board shall transmit a statement of the correction of the assessment to the auditor of the county or city in which the property is located.

4880. Entry locally. The auditor shall enter the correction on the roll of the county or city opposite the description of property, and shall file and

preserve the statement of the correction as a public record. The auditor shall make any necessary changes in his account with the tax collector.

History.—Stats. 1943, p. 1940, in effect August 4, 1943, substituted “description of property” for “assessment.”

Article 3. Incorrect Application of Payments

- § 4911. Payment or credit for payment on wrong property.
- § 4911.1. Payment credited to wrong property after title guarantee.
- § 4912. Cancellation voucher.
- § 4913. Notice of proposed transfer.
- § 4914. Hearing.
- § 4915. Payment of balance.
- § 4916. Refund of excess.

4911. Payment or credit for payment on wrong property. (a) If an assessee or agent of the assessee by mistake pays the tax on other than the property intended and by substantial evidence convinces the tax collector that the payment was intended for another property, the tax collector shall cancel the credit on the unintended property and transfer the payment to the property intended as prescribed in this article at any time before a guaranty or certificate of title issues respecting the unintended property and before two years have elapsed since the date of payment.

(b) If through no fault of the assessee or agent of the assessee, a tax payment is credited to property other than the property intended and the taxpayer by substantial evidence convinces the tax collector that the payment should have been credited to another property, the tax collector shall cancel the credit on the unintended property and transfer the payment to the property intended as prescribed in this article at any time before a guaranty or certificate of title issues respecting the unintended property and before two years have elapsed since the date of the payment.

(c) If any person mistakenly pays an amount of tax and there is no property of that person in the county to which that payment properly applies, the tax collector shall, by being convinced upon substantial evidence that the payment was a mistake, cancel the payment and return the amount paid to that person.

History.—Stats. 1967, p. 3203, in effect November 8, 1967, substituted “If an assessee or agency of the assessee” for “If a property owner” at the beginning of subdivision (a); substituted “shall” for “may” after “another property, the tax collector” in the middle of subdivision (a); and substituted “two years have elapsed since the date of payment.” for “the succeeding sale of property to the state.” at the end of subdivision (a); and added all of subdivision (b). Stats. 2001, Ch. 121 (SB 1183), in effect January 1, 2002, added subdivision (c).

4911.1. Payment credited to wrong property after title guarantee.

(a) If through no fault of the assessee or agent of the assessee a tax payment is credited to property other than the property intended and after a guaranty or certificate of title issues respecting the unintended property, the taxpayer by substantial evidence convinces the tax collector that the payment should have been credited to another property, the tax collector shall transfer the payment in full to the property intended, and shall cancel the credit on the unintended property. In the event a transfer of payment is made, the person owning the unintended property immediately before issuance of the guaranty

or certificate of title shall be personally liable for the amount so transferred that shall be collected in the manner specified for the collection of taxes on the unsecured roll.

(b) If any person mistakenly pays an amount of tax on a property after a guaranty of certificate of title has been issued and there is no other property of that person in the county to which that payment properly applies, the tax collector shall, upon being convinced upon substantial evidence that the payment was a mistake, cancel the payment and return the amount paid to that person. Upon cancellation of the payment, the person owning the property immediately before issuance of the guaranty or certificate of title shall be personally liable for the subject tax amount, which shall be collected in the manner specified for the collection of taxes on the unsecured tax roll.

History.—Added by Stats. 1967, p. 3203, in effect November 8, 1967. Stats. 2001, Ch. 121 (SB 1183), in effect January 1, 2002, designated the former first paragraph as subdivision (a) and substituted “that” for “which” after “transferred” in the second sentence therein; and added subdivision (b).

4912. Cancellation voucher. The property owner shall sign and file with the tax collector a verified cancellation voucher containing complete details of the transaction. If the transfer is made the voucher shall be preserved as a public record and reference to it shall be entered on the roll opposite the unintended property.

4913. Notice of proposed transfer. If a credit is canceled on unintended property, the tax collector shall notify the assessee or agent of the assessee of the unintended property by registered mail at his last known address respecting the proposed transfer.

If the credit on the unintended property is canceled and transferred pursuant to Section 4911.1, the tax collector shall inform the person owning the unintended property immediately before issuance of the guaranty or certificate of title that the credit has been canceled and transferred and the person so notified shall be personally liable for the amount so transferred which shall be collected in the manner specified for the collection of taxes on the unsecured roll.

History.—Stats. 1967, p. 3204, in effect November 8, 1967, added “if a credit is canceled on unintended property” at the beginning of the first sentence, and substituted “the assessee or agent of the assessee” for “the owner” after “notify” in the first sentence; and added all of the second paragraph.

4914. Hearing. The notice shall state that the owner of the unintended property may within 10 days after the mailing demand a hearing by the board of supervisors. If made, the demand shall be in duplicate and one copy shall be filed with the tax collector. The board of supervisors shall set a time for the hearing and its decision on the transfer is final.

4915. Payment of balance. If the amount paid is less than the amount due on the property intended, the balance of the amount due shall be paid before the transfer is made.

4916. Refund of excess. If the amount paid exceeds the amount due on the property intended, the applicant is entitled to a refund of the excess in the

same manner as an overcollection of tax is refunded; provided, however, that if the refund is made within 90 days after the date of payment it may be made by the tax collector.

History.—Stats. 1949, p. 468, in effect October 1, 1949, added provision relating to refunds made within thirty days after the date of payment. Stats. 1963, p. 1794, in effect September 20, 1963, changed the time within which refund may be made by the tax collector from 30 to 60 days. Stats. 1965, p. 1458, in effect September 17, 1965, substituted “90” days for “60” days.

Article 4. Incorrect Application of Payment on Redemption

- § 4920. Conditions on which article to be applicable.
- § 4921. Verified statement by redemptioner.
- § 4922. Notice to be given.
- § 4923. Content of notice.
- § 4924. Payment of balance.
- § 4925. Refund of overpayment.

4920. Conditions on which article to be applicable. (a) This article shall be applicable only if all of the following requirements of either of the following are met:

(1) (A) By substantial evidence, a redemptioner convinces the tax collector that money paid by him or her in redemption of any property or for the use of any property pursuant to Chapter 3 (commencing with Section 4186) of Part 7 was intended by him or her to be paid in connection with any other property or that the payment was, without his or her fault, credited to unintended property.

(B) The right of redemption has not terminated on the property in connection with which the payment was intended.

(C) Two years have not elapsed since the date of the payment.

(D) Since the date of payment, the property has not been transferred or conveyed to a bona fide purchaser for value or become subject to a bona fide encumbrancer for value.

(2) (A) By substantial evidence, a redemptioner convinces the tax collector that money paid by him or her in redemption of any property or for the use of any property pursuant to Chapter 3 (commencing with Section 4186) of Part 7 was, without his or her fault, credited to unintended property.

(B) The right of redemption has not terminated on the property in connection with which the payment was intended.

(C) Two years have not elapsed since the date of the payment.

(D) Since the date of payment, the property has been transferred or conveyed to a bona fide purchaser for value or become subject to a bona fide encumbrancer for value.

(b)(1) When the requirements of paragraph (1) of subdivision (a) are met, the tax collector shall transfer the payment to the property in connection with which the payment was intended, and in case the payment caused the redemption of the property in connection with which the payment was not intended, cancel the redemption of that property.

(2) When the requirements of paragraph (2) of subdivision (a) are met, the tax collector shall transfer the payment to the property in connection with which the payment was intended to be made, and shall cancel the credit on the

unintended property immediately before issuance of the guaranty or certificate shall be personally liable for the amount so transferred which shall be collected in the manner specified for the collection of taxes on the unsecured roll.

History.—Added by Stats. 1945, p. 1953, in effect September 15, 1945. Stats. 1967, p. 3204, in effect November 8, 1967, relettered former subdivisions (a), (b), (c) and (d) as (a) (1), (2), (3) and (4), added new subdivision (b) and made related changes. Stats. 1974, Ch. 1101, p. 2347, in effect January 1, 1975, substituted “tax collector” for “redemption officer” in subdivision (a) (1), in the first sentence of the last paragraph of subdivision (a), in subdivision (b) (1), and in the first sentence of the last paragraph of subdivision (b). Stats. 1978, Ch. 430, in effect January 1, 1979, deleted the words “One year” in paragraphs (3) of subdivisions (a) and (b) and substituted “Two years”. Stats. 1986, Ch. 1420, effective January 1, 1987, substituted “Since the date of payment, the property has not been transferred or conveyed to a bona fide purchaser for value or become subject to a bona fide encumbrancer for value.” for “A guarantee or certificate of title has not been issued on the property in connection with which the payment was credited.” in subsection (a)(4) and for “A guarantee or certificate of title has been issued on the property in connection with which the payment was credited.” in subsection (b)(4). Stats. 1990, Ch. 126, in effect June 11, 1990, substituted “of” for “in either”, after “requirements”, deleted “subdivision” after “(a) or”, and substituted “met” for “true” after “are” in the first paragraph; added a comma after “evidence”, deleted “of this division” after “Part 7”, substituted “the” for “such” after “or that” in paragraph (1) of subdivision (a); added “or her” throughout text; added “requirements” after “foregoing” and substituted “met” for “true” after “are” in the fifth paragraph of subdivision (a); added a comma after “evidence” and deleted “of this division” after “Part 7” in paragraph (1) of subdivision (b); deleted “not” after “property has” in paragraph (4) of subdivision (b); added “requirements” after “foregoing”, substituted “met” for “true” after “are” and substituted “that” for “such” after “event” in the fifth paragraph of subdivision (b). Stats. 1995, Ch. 189, in effect July 24, 1995, added subdivision letter designation (a) before first paragraph, and substituted “either of the following” for “subdivision (a) or (b)” after “requirements of” therein; deleted former subdivision letter designation (a) before “(1)” and added subparagraph letter designation (A) after “(1)” in paragraph (1) of subdivision (a); relettered former paragraphs (2), (3), and (4) of former subdivision (a) as subparagraphs (B), (C), and (D) of paragraph (1) of subdivision (a), respectively; added paragraph (2) to subdivision (a); added subdivision letter and paragraph number designations (b)(1) before former second paragraph, and deleted “all of” after “When”, deleted “foregoing” after “When the”, and added “of paragraph (1) of subdivision (a)” after “requirements” therein; deleted former subdivision (b) and paragraphs (1), (2), (3), and (4) therein which applied the provisions to a redemptioner where money paid in redemption of property was without fault credited to unintended property; added paragraph number designation (2) before former fourth paragraph, and deleted “all of” after “When”, deleted “foregoing” after “When the” and added “of paragraph (2) of subdivision (a)” after “requirements” therein; and added subdivision (c). Stats. 1996, Ch. 699, in effect January 1, 1997, deleted “property. In the event that a transfer is made, the person owning the unintended” after “credit on the unintended” in paragraph (2) of subdivision (b); and deleted former subdivision (c) which provided that “The holder of a tax certificate who received all or any part of the amount paid by the redemptioner shall not be obligated to make any refund or repayment of any amount to the redemptioner, the delinquent taxpayer, the county, or any other person. The tax collector may use amounts on deposit in the Tax Certificate Redemption Fund to make any payment required under this subdivision, but only to the extent those amounts were paid to the holder of the applicable tax certificate.”

4921. Verified statement by redemptioner. The redemptioner shall sign and file with the tax collector a verified statement containing complete details of the transaction. If the transfer is made the voucher shall be preserved as a public record and reference to it shall be entered on the delinquent roll opposite the unintended property.

History.—Added by Stats. 1945, p. 1953, in effect September 15, 1945. Stats. 1974, Ch. 1101, p. 2348, in effect January 1, 1975, substituted “tax collector” for “redemption officer” in the first sentence.

4922. Notice to be given. If a credit is canceled on unintended property, tax collector shall notify the assessee or agent of the assessee of the unintended property by registered mail at his last known address respecting the proposed transfer, or if no address is known, at the county seat. Assessee as used in this section refers to the assessee as shown on the last roll on which the unintended property appears.

If a credit on unintended property is canceled and transferred pursuant to subdivision (b) of Section 4920, the tax collector shall inform the person owning the property immediately before issuance of the guaranty or certificate of title that the credit has been canceled and transferred and the person so notified shall be personally liable for the amount so transferred which shall be collected in the manner specified for the collection of taxes on the unsecured roll.

History.—Added by Stats. 1971, p. 193, in effect March 4, 1972. Stats. 1974, Ch. 1101, p. 2348, in effect January 1, 1975, substituted "tax collector" for "redemption officer" in the first sentence of the first paragraph and in the first sentence of the second paragraph.

4923. Content of notice. The notice shall state that the last assessee of the property in connection with which payment may be transferred pursuant to this article, may within 10 days after the mailing demand a hearing by the board of supervisors. If made, the demand shall be in duplicate and one copy shall be filed with the tax collector. The board of supervisors shall set a time for the hearing and its decision on the matter is final.

History.—Added by Stats. 1945, p. 1954, in effect September 15, 1945. Stats. 1974, Ch. 1101, p. 2348, in effect January 1, 1975, substituted "tax collector" for "redemption officer" in the second sentence.

4924. Payment of balance. If the amount paid by the redemptioner is less than the amount necessary to redeem the property intended or less than the amount required to be paid for the use of the property pursuant to Chapter 3 of Part 7 of this division, the balance of the amount due shall be paid before the transfer is made.

History.—Added by Stats. 1945, p. 1954, in effect September 15, 1945.

4925. Refund of overpayment. If the amount paid by the redemptioner exceeds the amount necessary to redeem the property intended or more than the amount required to be paid for the use of the property pursuant to Chapter 3 of Part 7 of this division the applicant is entitled to a refund of the excess which shall be paid in the same manner as an overcollection of tax is refunded; provided, however, that if the refund is made within 90 days after the date of payment it may be made by the tax collector.

History.—Added by Stats. 1945, p. 1954, in effect September 15, 1945. Stats. 1949, p. 468, in effect October 1, 1949, added provision relating to refunds made within 30 days after the date of payment. Stats. 1963, p. 1794, in effect September 20, 1963, changed the period of refund by the redemption officer from 30 to 60 days. Stats. 1965, p. 1458, in effect September 17, 1965, substituted "90" days for "60" days. Stats. 1974, Ch. 1101, p. 2349, in effect January 1, 1975, substituted "tax collector" for "redemption officer".

CHAPTER 3. ENFORCEMENT OF TAX AFTER ERRONEOUS PROCEEDINGS

- § 4946. Cancellation of tax; notice to last assessee.
- § 4947. Contents.
- § 4948. Enforcement of tax.

4946. Cancellation of tax; notice to last assessee. All or any portion of any uncollected tax, penalty, or costs, heretofore or hereafter levied, may on satisfactory proof submitted by the tax collector be canceled by the auditor on order of the board of supervisors upon a showing that the collection of the delinquent tax cannot be enforced because of any errors in description, assessment, equalization, levy, or any other proceeding. If all or any portion of the property was taxable for the year or years for which the cancellation is made, the clerk shall send a notice to the last assessee of the property respecting the cancellation. A similar notice shall be sent to the last assessee, except that the grounds of cancellation need not be stated, in the event that any tax, penalty or costs, or any portion thereof, is ordered canceled or held void or ordered refunded by a final judgment of a court of competent jurisdiction.

History.—Stats. 1943, p. 1940, in effect August 4, 1943, revised second sentence and added first and third sentences. Stats. 1993, Ch. 1187, in effect January 1, 1994, deleted “with the written consent of the district attorney” after “supervisors” in the first sentence.

4947. **Contents.** The notice shall state:

(a) The grounds of cancellation;

(b) That collection of the tax for the year for which cancellation was made will be enforced unless cause is shown why such action should not be taken;

(c) That the assessee may demand a hearing by the board of supervisors within 10 days after the notice is sent.

If demanded, the board of supervisors shall set a time for the hearing and its decision is final as to whether or not collection of the tax should be enforced. If any portion of the property was taxable for the year for which cancellation is made, the board of supervisors shall order collection of the corrected tax for the year for which cancellation was made.

4948. **Enforcement of tax.** If the board of supervisors orders that collection of the tax should be enforced, the assessor shall assess the property at its value on the lien date of the year for which cancellation was made.

The property shall be entered on the roll prepared or being prepared in the assessment year when the cancellation is made. The entry shall be followed with “Taxes canceled for year 19__ and collection ordered enforced by Board of Supervisors ____ 19__.”

The amount charged against the property on the roll on which it is entered shall be the corrected tax for the year for which the cancellation was made. No penalties or other charges shall be charged on this assessment except those which may attach to other property assessed for the year in which this property is placed on the roll. If the tax rate for the year for which the cancellation is made has not been held invalid by a court, the tax rate to be applied shall be the rate fixed for such year. If the tax rate or any portion of it has been held invalid by a final judgment of a court, the corrected tax shall be determined by the auditor by applying all such judgments in the manner prescribed by the Controller.

Any revenue received on this assessment for the year for which cancellation is made shall be treated like revenue received from delinquent taxes for such year.

The collection of the tax shall be enforced in the same manner as the tax on other property on the roll on which is entered.

History.—Stats. 1943, p. 1941, in effect August 4, 1943, revised first two paragraphs and added the fifth paragraph.

CHAPTER 4. CANCELLATIONS

- Article 1. Generally. §§ 4985-4994.
- 1.5. Cancellation of Assessment on State-assessed Property. §§ 5011-5014.
 2. Cancellation of Assessments on Public Lands on Application of State Lands Commission. §§ 5026-5029.
 3. Cancellation of Assessments on Public Lands on Application of Property Owner. §§ 5061-5064.
 4. Cancellation of Tax Liens on Any Sixteenth or Thirty-sixth Section or Legal Subdivision Thereof. §§ 5071-5073.
 5. Cancellation of Taxes on Exempt Property. §§ 5081-5091.

Article 1. Generally

- § 4985. Tax collector's or assessor's errors.
- § 4985.1. Transfer of auditor's duties to tax collector.
- § 4985.2. Delinquent penalties; cancellation.
- § 4985.3. Relief from penalties.
- § 4986. Cancellation of uncollected taxes; cancellation of taxes on property acquired by public agencies.
- § 4986.1. Amount transferred to unsecured roll; limitation. [Repealed.]
- § 4986.2. City taxes.
- § 4986.3. Cancellation after assessment bond foreclosure.
- § 4986.4. Veterans' Welfare Board property.
- § 4986.5. Property distributed to State.
- § 4986.6. Escheated property; tax sale.
- § 4986.7. Acquisition of private property for public use. [Repealed.]
- § 4986.8. Tax collector's right to cancel small amounts.
- § 4986.9. Court order to tax collector for tax information on property condemned; prorated taxes paid out of award; tax lienor need not be named a party; extinguished lien transferred to purchase price or award. [Repealed.]
- § 4987. Exempt property.
- § 4988. Assessment by more than one county.
- § 4990. Certification; cancellation.
- § 4990.3. Quiet title suit.
- § 4991. Erroneous sale or deed. [Repealed.]
- § 4991. Erroneous declaration of tax default.
- § 4992. Cancellation of sale, etc., with tax. [Repealed.]
- § 4992. Erroneous declaration of power of sale.
- § 4993. Canceling sale. [Repealed.]
- § 4994. Canceling deed. [Repealed.]

4985. Tax collector's or assessor's errors. Any delinquent penalty, cost, redemption penalty, interest, or redemption fee, heretofore or hereafter attached, shall upon satisfactory proof submitted by the tax collector, the auditor, or the assessor, be canceled by the auditor upon a showing that the delinquent penalty, cost, redemption penalty, interest, or redemption fee has attached because of either of the following:

(a) An error of the tax collector, the auditor, or the assessor.

(b) They were unable to complete valid procedures initiated prior to the delinquency date. The collection shall be made upon the further showing that payment of the corrected or additional amount was made within 30 days from the date that the correction was entered on the roll or abstract record.

History.—Added by Stats. 1968, p. 790, in effect November 13, 1968, formerly Section 4833. Stats. 1974, Ch. 414, p. 1003, in effect January 1, 1975, added "either:" after "upon a showing that" in the first sentence; added the subdivision letters; added "; or" at the end of subdivision (a); and added subdivision (b). Stats. 1983, Ch. 1224, in effect January 1, 1984, deleted "uncollected" after "Any", substituted "the" for "either:" after "showing that", deleted "(a) Such" before the second "delinquent", deleted "or" after "record", and deleted former subdivision (b). Stats. 1991, Ch. 532, in effect January 1, 1992, deleted "on order of the board of supervisors with the written consent of the district attorney" after

"cancelled by the auditor". Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, added "either of the following: (a) after "because of" in the first sentence, and substituted a period for ", or because of their inability" after "assessor" in subdivision (a); added "(b) They were unable" before "to complete valid procedures", deleted "and" after "delinquency date" and added a period after "date;" and added "The collection shall be made" before "upon the further showing" to create the second sentence of subdivision (b).

4985.1. Transfer of auditor's duties to tax collector. In charter counties with a population of over 1,300,000, all or a portion of the duties imposed upon the auditor pursuant to Section 4985 may, upon approval of the auditor and by resolution of the board of supervisors, be transferred to the tax collector.

The tax collector shall make a report to the auditor in the manner prescribed by the auditor of any cancellation made pursuant to this section.

History.—Added by Stats. 1972, p. 1391, in effect March 7, 1973.

4985.2. Delinquent penalties; cancellation. Any penalty, costs, or other charges resulting from tax delinquency may be canceled by the auditor or the tax collector upon a finding of any of the following:

(a) Failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect, provided the principal payment for the proper amount of the tax due is made no later than June 30 of the fourth fiscal year following the fiscal year in which the tax became delinquent.

(b) There was an inadvertent error in the amount of payment made by the taxpayer, provided the principal payment for the proper amount of the tax due is made within 10 days after the notice of shortage is mailed by the tax collector.

(c) The cancellation was ordered by a local, state, or federal court.

History.—Added by Stats. 1978, Ch. 808, in effect January 1, 1979. This section amended old section 2617.5 and was renumbered to section 4985.2. The "(1)" was added between the words "that" and "the"; also the phrase "for the proper amount of the tax due" was added after the word "payment". In addition, the phrase beginning with "(2) there was" was added and replaced the phrase "within 30 days after the second delinquency date." Stats. 1979, Ch. 242, in effect July 10, 1979, substituted "penalty or costs" for "delinquent penalty on property", added "2621," after "2618," added "2706," after "2705," deleted "assessee's" after "(1) the", and substituted "taxpayer" for "assessee" in subdivision (a); substituted "taxpayer" for "assessee" in the first sentence, and deleted "or within 60 days following the effective date of this Act, whichever is later" after "paid" in the second sentence of subdivision (b); and deleted "or redemption officer" after "tax collector" in subdivision (c). Stats. 1983, Ch. 1224, in effect January 1, 1984, substituted "Any penalty . . . tax delinquency" for "(a) Any uncollected penalty or costs provided for in Sections 2617, 2618, 2621, 2704, 2705, 2706, or 2922" before "may be", substituted "auditor or the tax collector" for "tax collector or the auditor" after "by the", substituted "no later than . . . became delinquent" for "within 90 days after the first delinquency date or within 30 days after the second delinquency date" before "or, (2)", and deleted former subdivisions (b) and (c). Stats. 1990, Ch. 992, in effect January 1, 1991, substituted "of any of the following:" for "that" after "finding", substituted new subdivision (a) for "(1)", substituted "Failure" for "the failure", after "(a)", substituted "in" for "and" after "ordinary care", and substituted a period for ", or," after "became delinquent" in subdivision (a), substituted new subdivision (b) for "(2)", substituted "There" for "there" after "(b)" in subdivision (b), and added subdivision (c). Stats. 1991, Ch. 532, in effect January 1, 1992, deleted "with the approval of the board of supervisors" in the first paragraph. Stats. 1996, Ch. 800, in effect January 1, 1997, added "fourth" after "June 30 of the" in subdivision (a).

4985.3. Relief from penalties. (a) Notwithstanding Section 2610.5, in the case of cancellations made to the roll pursuant to Section 1646.1, where a taxpayer has failed to pay an amount of tax computed upon assessed value that is the subject of a pending assessment appeal, the relief from penalties shall apply only to the difference between the county board's final determination of value and the value on the assessment roll for the fiscal year

covered by the application. For purposes of this section, "county board" means either a county board of supervisors that meets as a county board of equalization or an assessment appeals board.

(b) The county board shall cause notice of the requirements of this section to be mailed to each taxpayer or to be presented to each taxpayer upon filing an application for reduction in assessment with the county board if that taxpayer will be impacted by the penalty provisions of this section.

(c) For any taxpayer who has paid at least 80 percent of the amount of tax finally determined due by the county board within 60 days of mailing or presentation of the notice prescribed in subdivision (b), the tax collector shall accept payment of the balance of the tax due without penalties or interest.

(d) This section shall apply only to those properties upon which an application for reduction in assessment is pending before the county board on the effective date of the act adding this section or those applications for reduction in assessment that are filed with the county board after the effective date of the act adding this section.

(e) This section shall only become operative if the board of supervisors of a county, with the approval of the county's tax collector and the county's auditor, adopts a resolution or ordinance approving this section.

History.—Added by Stats. 1994, Ch. 856, in effect September 27, 1994.

4986. Cancellation of uncollected taxes; cancellation of taxes on property acquired by public agencies. (a) All or any portion of any tax, penalty, or costs, heretofore or hereafter levied, shall, on satisfactory proof, be canceled by the auditor if it was levied or charged:

(1) More than once.

(2) Erroneously or illegally.

(3) On the canceled portion of an assessment that has been decreased pursuant to a correction authorized by Article 2 (commencing with Section 4876) of Chapter 2.

(4) On property which did not exist on the lien date.

(5) On property annexed after the lien date by the public entity owning it.

(6) On property acquired by the United States, the state, or by any county, city, school district or other public entity, to the extent provided in Article 5 (commencing with Section 5081).

(7) On that portion of an assessment in excess of the value of the property as determined by the assessor pursuant to Section 469.

(b) No cancellation under paragraph (2) of subdivision (a) shall be made in respect of all or any portion of any tax, or penalties or costs attached thereto, collectible by county officers on behalf of a city without the written consent of the city attorney or other officer designated by the city council unless the city council has authorized the cancellation by county officers. The resolution shall remain effective until rescinded by the city council.

History.—Stats. 1941, p. 2641, in effect September 13, 1941, added to former subdivision (e) a reference to the United States of America, and added the last two sentences. Stats. 1945 p. 31 (Third Extra Session 1944), in effect May 1, 1944, deleted "United States of America" from former subdivision (e) and added former subdivision (f). Stats. 1947, p. 2023, in effect September 19, 1947, added former subdivision (g) and provisions pertaining to former subdivision (g), dealing with uncollected taxes, etc., on personal property or improvements assessed as a lien against real property which

passed into public ownership after the lien date. Stats. 1955, p. 1460, in effect September 7, 1955, added to former subdivision (e) "and on property annexed after the lien date by the city owning it." Stats. 1959, p. 3045, in effect September 18, 1959, rearranged the section, added (2)(a), the first paragraph of which in part only is a rearrangement of portions of the former section, and added (2)(b). Stats. 1961, p. 1849, in effect September 15, 1961, added (1)(e) and deleted the identical language from the first sentence of (2)(a). Stats. 1963, p. 2531, in effect September 20, 1963, added (f) under (1), and substituted "entity" for "agency" wherever it appears, and substituted "district attorney" for "county legal advisor" in the first paragraph, and added "gift, or devise" and substituted "shall be canceled" for "shall not be transferred" in the second paragraph under (2)(a), and added the last paragraph under (2)(a) and the last paragraph under (2)(b). Stats. 1966, p. 679 (First Extra Session), in effect October 6, 1966, substituted "ratio of assessed value to the full cash value of the property as provided in Section 401" for "cash value of the property" in (1)(c). Stats. 1967, p. 1902, in effect November 8, 1967, deleted "thereof" and added "or other officer designated by the city council . . . the cancellation by county officers." after "city attorney" at the end of the first sentence in the next to the last paragraph; and added the last sentence of said paragraph. Stats. 1970, p. 357, in effect November 23, 1970, deleted "uncollected" in the first sentence; substituted "property" for "improvements when the improvements" in (1)(d); and added the phrases "shall be paid through escrow at the close of escrow, or if unpaid for any reason, they shall be collected like any other taxes on the unsecured roll. If unpaid at the time set for the sale of property on the unsecured roll to the state, "they" in (2)(a). Stats. 1973, Ch. 1190, p. 2506, in effect January 1, 1974, substituted (a) for (1) at beginning of the first paragraph, substituted (1) for (a), (2) for (b), and (3) for former (c) relating to excess assessment caused by assessor's error as to ratio, substituted (4), (5) and (6) for former (d), (e) and (f) respectively, substituted (b) for former (2)(a), deleted "or" after "gift" and added "or eminent domain proceeding" after "devise" in the first sentence of the second paragraph of subdivision (b), deleted "(a)" after "subdivision" in the first sentence of the fourth paragraph of subdivision (b), deleted several sentences at the beginning of the fifth paragraph of subdivision (b) relating to proration of taxes and payment thereof out of condemnation award, substituted (2) for (b) after "paragraph" and (a) for (1) after "subdivision" in the first sentence of the sixth paragraph of subdivision (b), and substituted "section and Section 4986.9" for "subdivision" in the last sentence of the sixth paragraph of subdivision (b). Stats. 1974, Ch. 1101, p. 2349, in effect January 1, 1975, added "shall be paid through escrow at the close of escrow, or if unpaid for any reason, they" after "before the date of acquisition of the property", and substituted "pursuant to Section 2921.5 and shall be" for "and be" in the second sentence of the second paragraph of subdivision (b). Stats. 1978, Ch. 732, in effect January 1, 1979, added paragraph (7) of subdivision (a). Stats. 1979, Ch. 31, in effect January 1, 1980, substituted "shall" for "may" after "levied" in subdivision (a), deleted "of this part" after "Chapter 2" in paragraph (3) thereof, and deleted "prior to September 18, 1959," after "acquired", deleted "of America" after "United States", and substituted "public entity, to the extent provided in Article 5 (commencing with Section 5081) for "political subdivision and which, because of such public ownership, became not subject to sale for delinquent taxes" after "other" in paragraph (6) thereof; and deleted the first five former paragraphs of subdivision (b), and deleted "of this section" after "subdivision (a)" in the first sentence and deleted the former third sentence of the former sixth paragraph thereof. Stats. 1985, Ch. 186, effective January 1, 1986, substituted "Article 2" for "Article 1" after "authorized by" in paragraph 3 of subdivision (a). Stats. 1991, Ch. 532, in effect January 1, 1992, deleted "on order of the board of supervisors with the written consent of the county legal adviser" after "canceled by the auditor" in subdivision (a) and deleted ", by resolution filed with the board of supervisors," after "unless the city council" in the first sentence of subdivision (b).

Note.—This section was also amended by Stats. 1941, p. 1739, which added to (e) the reference to the United States of America.

Not exclusive remedy.—Regardless of this section, county tax liens on lands acquired by a city prior to and after the lien date are discharged upon annexation of the lands by the city within the tax year and the city is entitled to refund of the taxes paid by it under protest. *City of Long Beach v. Board of Supervisors*, 50 Cal.2d 674.

Cancellation mandatory.—The use of the word "may" in this section does not confer any option or discretion in the matter of the cancellation of assessments. If an assessment is shown to be invalid, its cancellation is mandatory. *City of Los Angeles v. Board of Supervisors*, 108 Cal.App. 655.

See also, *San Diego County v. United States*, 251 F.2d 534.

Private property.—This section does not afford relief against a mere overvaluation by the assessor. *Rittersbacher v. Board of Supervisors*, 220 Cal. 535.

Public property.—Constitutionality.—Subdivision (e) of this section does not violate Article XIII, Section 6 of the Constitution. *People v. Board of Supervisors*, 126 Cal.App. 670.

Cancellation of taxes on property acquired by the United States in condemnation proceedings does not constitute a gift of public money or other thing of value in contravention of Article IV, Section 31, of the State Constitution. *San Diego County v. United States*, 251 F.2d 534.

Construction.—A municipality is entitled to a cancellation of delinquent taxes upon property acquired by it. It is immaterial that the property is only a portion of a larger parcel taxed as a unit, that it is acquired for a temporary purpose, and that the title is to revert to the grantor upon accomplishment of the purpose. *City of Los Angeles v. Ford*, 12 Cal.2d 407.

Taxes on improvements as well as realty acquired by the United States in condemnation proceedings after the lien date are canceled under this section. *San Diego County v. United States*, 251 F.2d 534.

A city acquiring property on which taxes are past due is not required to apply for a cancellation under this section, and in the absence of such an application the taxes are not cancellable. *City of Pasadena v. Chamberlain*, 1 Cal.App.2d 125.

A state agency acquiring land subject to a tax lien, and selling the land under a conditional contract of sale before any action is taken to cancel the taxes, is not entitled to obtain a cancellation of the taxes. *Department of Veterans Affairs of the State of California v. The Board of Supervisors of San Joaquin County*, 31 Cal.2d 657.

A state agency which has acquired property can obtain a cancellation of the taxes of other state agencies which were a lien on the property at the time of acquisition only if the property is impressed with a public use. Thus, an irrigation district which has acquired property for delinquent irrigation district assessments cannot compel the cancellation of county taxes which were a lien on the property at the time of acquisition. *La Mesa, etc., Irrigation District v. Hornbeck*, 216 Cal. 730. Cf. *Anderson-Cottonwood Irrigation District v. Klukkert*, 13 Cal.2d 191, 198.

An assessee of improvements is not entitled to cancellation of the assessments because of misclassification of similar property of others as personal property where the assessor has adopted a reasonable reclassification procedure eliminating the more serious errors existing in prior years and sufficient time was not available to correct the remaining errors. *Security-First National Bank v. Board of Supervisors*, 35 Cal.2d 323.

Between a condemnee and the taxing agency taxes should not be considered to be canceled under this section if the procedure prescribed by the statute is not followed. *City of Long Beach v. Aistrup*, 164 Cal.App.2d 41. See also *State of California v. Clyne*, 175 Cal.App.2d 204.

A stipulation whereby a condemner in an eminent domain proceeding agreed to assume all taxes and penalties on the condemned property up to a specified sum, and the condemnees agree to waive interest up to the same amount, was not made illegal by the 1959 amendment to § 4986, since nothing in the statute prohibits a condemner from paying such taxes and penalties. *City of Burbank v. Nordahl*, 199 Cal.App.2d 311.

Condemnation proceedings.—Where property is ultimately taken in condemnation proceedings property taxes are canceled only from the date of the condemnation order, and the fact that taxpayer was unable to continue a construction project on the land pending the condemnation hearing did not constitute constructive possession by the state which would justify an earlier date for cancellation of taxes. *Consumers Holding Co. v. Los Angeles County*, 204 Cal.App.2d 324. The date of the condemnation order is the date the final order of condemnation is recorded, and absent an order of possession, a taxpayer is responsible for property taxes on condemned property until such date, even though liability therefor accrues during the pendency of the condemnor's unsuccessful appeal from the judgment on the jury's award. *City of Ontario v. Kelber*, 35 Cal.App.3d 751.

4986.1. Amount transferred to unsecured roll; limitation.
[Repealed by Stats. 1979, Ch. 31, in effect January 1, 1980.]

4986.2. City taxes. All or any portion of uncollected city taxes, penalties or costs may be canceled on any of the grounds specified in Section 4986. If the city taxes are collected by the county, the procedure outlined in Section 4986 for the cancellation of taxes, penalties or costs shall be followed, except that the consent of the city attorney, in lieu of the consent of the county legal advisor, is necessary before cancellation. If the taxes are collected by the city, the taxes, penalties, or costs shall be canceled by the officer having custody of the records thereof on order of the governing body of the city, with the written consent of the city attorney.

History.—Added by Stats. 1941, p. 1753, in effect May 30, 1941. Stats. 1979, Ch. 31, in effect January 1, 1980 substituted "county legal advisor" for "district attorney".

Note.—See *County of San Diego v. United States*, 251 F.2d 534, noted under Section 4986.

4986.3. Cancellation after assessment bond foreclosure. All or any portion of any uncollected tax, penalty, or costs, heretofore or hereafter levied, and not heretofore validly canceled, may, on satisfactory proof, be canceled by the auditor on order of the board of supervisors with the written consent of the district attorney if it was levied or charged on property subject to assessment or special taxes for the payment of bonds issued under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) or the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Division 2 of Part 1 of Title 5 of the Government Code) where that property was acquired after the lien date by a city on foreclosure proceedings under the Improvement Bond Act of 1915 or the Mello-Roos Community Facilities Act of 1982. If a city is entitled to bring foreclosure proceedings under the Improvement Bond Act of 1915 or the Mello-Roos Community Facilities Act of 1982 against any property and the city acquires the property in any other manner than by foreclosure and the governing body of the city by resolution, covering any number of parcels acquired, declares that the acquisition was in lieu of acquisition under foreclosure proceedings, that acquisition is, for the

purposes of this section, an acquisition by foreclosure proceedings under the Improvement Bond Act of 1915 or the Mello-Roos Community Facilities Act of 1982. This section applies regardless of whether the property acquired by the city is impressed with a public trust or is acquired for the purpose of resale. As used in this section, "city" means any city, county, city and county, special district, school district, joint powers authority, or any other municipal corporation, district, or political subdivision of the state.

History.—Stats. 1997, Ch. 946 (AB 1224) in effect January 1, 1998, added "or special taxes" after "assessment" and substituted "that" for "such" after "where" in the first sentence, substituted "the" for "such" after "declares that" and substituted "that" for "such" after "proceedings", in the second sentence and added "or the Mello-Roos Community Facilities Act of 1982 (Ch. 2.5 (commencing with Sec. 53311), Div. 2, Pt. 1, Title 5, Gov. C.)" after "1915" throughout the text. Stats. 1999, Ch. 550 (SB 275), in effect September 28, 1999, extended abbreviated code section references in the first sentence, deleted "(Ch. 2.5 (commencing with Sec. 53311), Div. 2, Pt. 1, Title 5, Gov. C.)" after "1982" in the first sentence and in both places in the second sentence, and added the last sentence.

Constitutionality.—This section is valid. *City of Ojai v. Chaffee*, 60 Cal.App.2d 54.

4986.4. Veterans' Welfare Board property. Whenever any property has been deeded to the Veterans' Welfare Board pursuant to Division 4 of the Military and Veterans Code and a petition has been filed with any county or city for the cancellation of taxes pursuant to this article, the district attorney or city attorney, as the case may be, shall investigate the facts stated in the petition, and if he finds them to be true, shall approve the petition and recommend to the legislative body that the taxes described in the petition be canceled.

History.—Added by Stats. 1945, p. 782, in effect September 15, 1945.

Authority to cancel taxes.—While this section allows the Department of Veterans Affairs to apply for and receive a cancellation of taxes that are a lien on property acquired by it, the section does not otherwise enlarge the authority to cancel taxes granted under Section 4986 of the Revenue and Taxation Code. *Department of Veterans Affairs of the State of California v. Board of Supervisors of San Joaquin County*, 31 Cal.2d 657.

4986.5. Property distributed to State. When real property is distributed by description to the State after the lien date because there are no known heirs or because the estate or any portion thereof is to be distributed to heirs, devisees, or legatees whose whereabouts are unknown, taxes upon such real property shall not be paid for a period of five years after the date of entry of the decree of distribution except as provided in this section.

(a) If five years after the date of entry of the decree of distribution elapse without claim by the heirs of decedent or other persons entitled to make such claim, all taxes shall be canceled by the auditor on order of the board of supervisors with the written consent of the district attorney.

(b) If during the five-year period the real property is claimed by the heirs of decedent or other persons entitled to make such claim, all taxes upon such real property become due upon the approval of the claim, and shall be collected in the manner provided by law.

(c) If during the five-year period the State sells the real property it shall credit the proceeds of the sale to the particular estate and all taxes thereon shall be canceled. If the proceeds are claimed within the five-year period and the claim is allowed, the Controller shall deduct from the amount allowed to be paid to the claimant and remit to the taxing agency an amount equal to all taxes canceled plus any other amounts which would have been necessary to

redeem the property at the time of cancellation, in accordance with an estimate thereof by the redemption officer.

History.—Added by Stats. 1951, p. 377, in effect September 22, 1951. Stats. 1959, p. 4653, in effect September 18, 1959, added “after the lien date” following “State” in the first paragraph, deleted “upon which taxes may be canceled pursuant to subdivision (e) of Section 4986” following “When real property,” deleted “pursuant to Section 4986” in subdivision (a) following “canceled” and added the remainder of the sentence.

4986.6. Escheated property; tax sale. When any real property escheats to the State after the lien date and is not distributed by description, either because it is unknown, or is included in a general distribution clause without description, or is property as to which no probate proceedings have been taken, all taxes levied upon the real property are valid and any tax sale for those taxes conveys the same title thereto as if no escheat had occurred, notwithstanding any provision of law to the contrary. All such taxes levied upon the real property and tax sales duly taken pursuant to law occurring before the effective date of this section are hereby validated.

If any such real property is discovered prior to tax sale, the public administrator of the county in which the property is situated shall immediately commence probate proceedings with respect to the property, and the tax sale shall not be made.

History.—Added by Stats. 1951, p. 378, in effect September 22, 1951. Stats. 1959, p. 4654, in effect September 18, 1959, deleted “upon which taxes may be canceled pursuant to subdivision (e) of Section 4986” following “When any real property” and added “after the lien date,” following “escheats to the State.” Stats. 1985, Ch. 316, effective January 1, 1986, substituted “the” or “those” for “such” throughout the section; deleted “by the State” after “tax sale” in the first sentence, and deleted “by the State” after “tax sales” in the second sentence in the first paragraph; and deleted “by the State” after “tax sale” in the second paragraph.

4986.7. Acquisition of private property for public use. [Repealed by Stats. 1979, Ch. 31, in effect January 1, 1980.]

4986.8. Tax collector’s right to cancel small amounts. (a) On recommendation of the tax collector, the auditor may cancel any tax bill if the amount is so small as not to justify the cost of collection.

(b) Any penalties, costs, fees, or special assessments, excluding improvement bonds, that are the result of nonpayment of any tax bill which is cancelled pursuant to this section may also be cancelled.

History.—Added by Stats. 1978, Ch. 1126, in effect January 1, 1979. Stats. 1990, Ch. 126, in effect June 11, 1990, added a comma after “district tax” in subdivision (a), added “total” after “The”, substituted “all taxes due” for “any tax” after “amount of”, substituted “twenty” for “ten” after “exceed”, and substituted “(\$20) per parcel” for “(\$10)” after “dollars” in subdivision (b), added a comma after “costs” and substituted “result” for “results” after “are the” in subdivision (c). Stats. 1991, Ch. 532, in effect January 1, 1992, deleted “of all taxes due” after “amount” in subdivision (b). Stats. 1994, Ch. 705, in effect January 1, 1995, substituted “bill” for “parcel” after “dollars (\$20) per” in subdivision (b). Stats. 1995, Ch. 527, in effect January 1, 1996, substituted “bill” for “assessment, special district tax, or special assessment” after “any tax” in subdivision (a); deleted former subdivision (b) which read: “The total amount which may be canceled pursuant to this section shall not exceed twenty dollars (\$20) per bill.”; relettered former subdivision (c) as (b), substituted “fees, or special assessments, excluding improvement bonds,” for “or fees” after “penalties, costs,” and added “bill” after “any tax” in subdivision (b).

4986.9. Court order to tax collector for tax information on property condemned; prorated taxes paid out of award; tax lienor need not be named a party; extinguished lien transferred to purchase price or award. [Repealed by Stats. 1979, Ch. 31, in effect January 1, 1980.]

4987. Exempt property. No cancellation shall be made of charges on tax exempt property if there has not been compliance with the statutory procedure for claiming the exemption.

4988. Assessment by more than one county. Where real property is assessed by the assessors of two or more counties for the same year the owner may file an action in the superior court of one of these counties against the conflicting claimants, discharge the obligation by paying the largest amount of taxes levied on the property by any of the counties into court, and compel the counties to interplead and litigate their several claims among themselves under Section 386 of the Code of Civil Procedure.

4990. Certification; cancellation. On discovery that any property is assessed by the same taxing agency more than once for the same year, after payment of all charges justly due on the property the county assessor or the person having custody of the roll shall certify the facts to the board of supervisors. The board of supervisors shall then order the auditor to cancel the other charges and assessments by an entry on the margin of the roll and, if carried there, the delinquent and current roll.

History.—Stats. 1941, p. 410, operative February 1, 1941, added words “by the same taxing agency” to first sentence. Stats. 1943, p. 1941, in effect August 4, 1943, substituted “delinquent and current roll” for “delinquent list.” Stats. 1970, p. 359, in effect November 23, 1970, added “the county assessor or” to the first sentence.

4990.3. Quiet title suit. An action may be brought at any time against this State or any county or city to quiet title against the lien of any taxes which have been canceled in accordance with this division.

Note.—Service of process in such actions against the State is made under Section 160.

4991. Erroneous sale or deed. [Repealed by Stats. 1975, Ch. 214, p. 586, in effect January 1, 1976.]

4991. Erroneous declaration of tax default. If the tax collector declares property to be tax defaulted for taxes which were a lien on the property for any year, and:

- (a) The taxes for that year had been paid prior to that date, or
- (b) The taxes have been legally canceled, or
- (c) The taxes are valid but an error subsequent to the levy of the taxes renders void the declaration; the tax collector, with the approval of the auditor, shall cancel the declaration. The fact and date of the cancellation shall be entered on the abstract or electronic data processing records.

If the tax collector is not operating under the provisions of Article 2 (commencing with Section 3446) of Chapter 2 of Part 6, the tax collector shall transmit a copy of the cancellation to the Controller in the form prescribed by the Controller.

History.—Added by Stats. 1975, Ch. 214, p. 586, in effect January 1, 1976. Stats. 1983, Ch. 1281, in effect September 30, 1983, deleted “of Division 1” after “Chapter 2”, and deleted “State” after “to the” and after “by the” in the second paragraph. Stats. 1985, Ch. 316, effective January 1, 1986, substituted “declares” for “sells” after “tax collector” and substituted “be tax defaulted” for “the state” after “property to” in the first paragraph, substituted “the” for “that” after “prior to” and deleted “of sale” after “date” in subsection (a) thereof; and substituted “declaration” for “sale to the state” after “void the”, and substituted “declaration” for “sale” after “cancel the” in the first sentence of subsection (c) thereof.

4992. Cancellation of sale, etc., with tax. [Repealed by Stats. 1975, Ch. 214, p. 586, in effect January 1, 1976.]

4992. Erroneous declaration of power of sale. If the tax collector declares property subject to a power of sale pursuant to Section 3691 and,

either (a) the declaration that the property is tax defaulted is canceled under Section 4991, or (b) the power to sell is void because of any error occurring subsequent to the declaration, then the tax collector, with the approval of the auditor, shall cancel the power to sell in the form prescribed by the Controller. The cancellation shall be acknowledged, without charge, and shall be recorded with the county recorder, without charge.

The fact and date of the cancellation shall be entered on the abstract or electronic data processing records.

History.—Added by Stats. 1975, Ch. 214, p. 586, in effect January 1, 1976. Stats. 1985, Ch. 316, effective January 1, 1986, substituted “declares property subject to a power of sale pursuant to Section 3691” for “deeds property to the state” after “tax collector”, added “either” after “and”, substituted “declaration that the property is tax defaulted” for “sale to the state of such property” after “the”, substituted “power to sell” for “deed to the state” after “the”, substituted “declaration, then” for “sale to the state, the” after “the”, substituted “power to sell” for “deed to the state” after “the”, and deleted “state” before “Controller” in the first sentence of the first paragraph; and deleted “state” before “Controller” in the second paragraph. Stats. 1998, Ch. 497 (SB 2233), in effect January 1, 1999, deleted “, and the tax collector shall transmit a copy of the recorded cancellation to the Controller” after “records” in the first sentence of the second paragraph.

4993. **Canceling sale.** [Repealed by Stats. 1975, Ch. 214, p. 586, in effect January 1, 1976.]

4994. **Canceling deed.** [Repealed by Stats. 1975, Ch. 214, p. 586, in effect January 1, 1976.]

Article 1.5. Cancellation of Assessments on State-assessed Property

- § 5011. Grounds for cancellation.
- § 5012. Entry in records.
- § 5013. Notification to auditor.
- § 5014. Duties of auditor.

5011. **Grounds for cancellation.** All or any portion of any assessment of state-assessed property heretofore or hereafter levied may, on satisfactory proof, be canceled by the board if it was made:

- (a) More than once.
- (b) Erroneously or illegally.
- (c) On improvements when the improvements did not exist on the lien date.

History.—Added by Stats. 1951, p. 3218, in effect September 22, 1951. Stats. 1957, p. 768, in effect September 11, 1957, added “of state assessed property” following “assessment.”

5012. **Entry in records.** The date and nature of the cancellation shall be entered in the records of the board.

History.—Added by Stats. 1951, p. 3219, in effect September 22, 1951.

5013. **Notification to auditor.** The board shall transmit a statement of the cancellation to the auditor of the county or city in which the property is located.

History.—Added by Stats. 1951, p. 3219, in effect September 22, 1951.

5014. **Duties of auditor.** The auditor shall enter the cancellation on the roll of the county or city and shall file and preserve the statement of the cancellation as a public record. The auditor shall make any necessary changes in his account with the tax collector.

History.—Added by Stats. 1951, p. 3219, in effect September 22, 1951.

Article 2. Cancellation of Assessments on Public Lands on
Application of State Lands Commission

- § 5026. Cancellation procedure.
- § 5027. Effect on deed.
- § 5028. Lands subject.
- § 5029. Land not subject.

5026. Cancellation procedure. On application by the State Lands Commission, accompanied by its certificate that no valid patent has ever been issued for the land described in the application and that the land is public land of the State, the board of supervisors shall order the auditor to cancel all assessments for taxes levied on the land. On the making of the order all the assessments and the taxes levied on the assessments are null.

5027. Effect on deed. If the land has been deeded to the State for taxes, the cancellation of assessment does not affect the validity of the deed to the State.

5028. Lands subject. This article applies to all public lands sold by the State at public auction which, at the time of the sale, were subject to a lien for taxes.

5029. Lands not subject. This article does not apply to:

- (a) Lands acquired by the State on a sale for taxes, when the deed is required to be filed with the Controller.
- (b) Swamp and overflowed lands.

Article 3. Cancellation of Assessments on Public Lands on
Application of Property Owner

- § 5061. "Public land."
- § 5062. Cancellation procedure.
- § 5063. Persons not subject.
- § 5064. Effect on assessee.

5061. "Public land." As used in this article, "public land" means:

- (a) The possession of, claim to, or right to the possession of land belonging to the United States.
- (b) Land on which final payment had not been made to the United States at the time of assessment.
- (c) Land sold by this State on which the full purchase price has not been paid.

5062. Cancellation procedure. If any public land is heretofore or hereafter assessed and the taxes are not paid, the board of supervisors shall order the auditor to cancel the assessment if:

- (a) Verified application is made by the owner of the land, and
- (b) The applicant files with the board of supervisors a certificate of the Register of the United States Land Office, or of the State Lands Commission, showing that the assessee or his successor in interest never received a patent or otherwise acquired title to the land.

5063. Persons not subject. This article does not apply if the assessed of the public land, after the assessment:

(a) Obtained from the United States or this State a patent or the absolute title to the land.

(b) Retains any interest in the land.

(c) Has been in possession of the land.

5064. Effect on assessee. A cancellation of assessment under this article does not relieve any person or his successor in interest from paying taxes on the property for the full time he had the possession of the property, no matter in whose name the property was assessed, nor does it give the assessee any rights he would not have had if the assessment had not been canceled.

Article 4. Cancellation of Tax Liens on Any Sixteenth or Thirty-Sixth Section or Legal Subdivision Thereof

§ 5071. Procedure.

§ 5072. Certificate of use.

§ 5073. Notification.

5071. Procedure. On petition of the State Lands Commission, the board of supervisors, at its first meeting after receipt of the petition, shall order the cancellation of all liens for taxes on any sixteenth or thirty-sixth section, or legal subdivision thereof, which, subsequent to March 24, 1909, is used as the base for lieu selections.

History.—Added by Stats. 1955, p. 508, in effect September 7, 1955.

5072. Certificate of use. A certificate from the State Lands Commission certifying that any sixteenth or thirty-sixth section is to be used as the base for lieu selections is authority for the action of the board of supervisors in ordering the cancellation of liens for taxes on such lands.

History.—Added by Stats. 1955, p. 508, in effect September 7, 1955.

5073. Notification. The board of supervisors shall report the cancellation of the liens to the State Lands Commission and to the county auditor.

History.—Added by Stats. 1955, p. 508, in effect September 7, 1955; Stats. 1955, p. 950, in effect September 7, 1955, substituted "auditor" for "recorder" and deleted reference to notation on records of recorder.

Article 5. Cancellation of Taxes on Exempt Property *

§ 5081. Exempt property defined.

§ 5082. Date of apportionment defined.

§ 5082.1. Duties of public entities.

§ 5083. Lien extinguished.

§ 5084. Cancellation of taxes.

§ 5085. Acquisition prior to beginning of fiscal year.

§ 5086. Acquisition after beginning of fiscal year.

§ 5086.1. Cancellation on date of apportionment.

§ 5087. Optional payment plan.

§ 5088. Taxes not transferred to unsecured roll.

§ 5089. Cancellation of taxes if less than \$10.00.

§ 5090. Taxes not subject to cancellation.

§ 5091. Required notice by public entity.

* Article 5 was added by Stats. 1979, Ch. 31, in effect January 1, 1980.

5081. Exempt property defined. As used in this article, “exempt property” means:

(a) Property acquired by the United States that becomes exempt from taxation under the laws of the United States.

(b) Property acquired by the state or by a county, city, school district, or other public entity, that becomes exempt from taxation under the laws of the state.

5082. Date of apportionment defined. For purposes of this article, the “date of apportionment” is the earliest of the following times:

(a) The date the conveyance to the acquiring entity or the final order of condemnation is recorded.

(b) The date of actual possession by the acquiring entity.

(c) The date upon or after which the acquiring entity may take possession as authorized by an order for possession or by a declaration of taking.

5082.1. Duties of public entities. Every public entity shall do all of the following:

(a) Provide the local assessor and auditor a copy of the instrument evidencing the acquisition of property by the entity.

(b) Indicate on the instrument referred to in subdivision (a) the date of apportionment.

(c) Request the auditor to cancel taxes for the remaining portion of the fiscal year after the date of apportionment.

(d) Provide a map of the acquired property.

History.—Added by Stats. 1985, Ch. 650, effective January 1, 1986.

5083. Lien extinguished. If exempt property is acquired either by negotiated purchase or eminent domain any lien on the property for ad valorem taxes is extinguished as a matter of law upon the acquisition of the property, and the lien immediately transfers and attaches to the proceeds constituting the purchase price or award.

5084. Cancellation of taxes. (a) No cancellation shall be made of all or any portion of any unpaid taxes or any penalties or costs levied for prior tax years that constitute a lien at the time of acquisition of exempt property.

(b) Such unpaid taxes, penalties, and costs shall be paid through escrow at the close of escrow or from the award in eminent domain, or if unpaid for any reason, shall be transferred to the unsecured roll pursuant to Section 5090 and are collectible from either the person from whom the property was acquired or the public entity that acquired the property.

5085. Acquisition prior to beginning of fiscal year. If exempt property is acquired by negotiated purchase, gift, devise, or eminent domain after the lien date but prior to the commencement of the fiscal year for which taxes are a lien on the property, the amount of the taxes for that fiscal year shall be canceled and are not collectible from either the person from whom the property was acquired or the public entity that acquired the property.

5086. Acquisition after beginning of fiscal year. If exempt property is acquired by negotiated purchase, gift, devise, or eminent domain after commencement of the fiscal year for which the current taxes are a lien on the property:

(a) The portion of the current taxes and any penalties and costs that are allocable to the part of the fiscal year that ends on the day before the date of apportionment shall be paid through escrow at the close of escrow or from the award in eminent domain.

(b) The portion of the current taxes and any penalties and costs that are allocable to the part of the fiscal year that begins on the date of apportionment shall be canceled and are not collectible either from the person from whom the property was acquired or from the public entity that acquired the property.

(c) If the amount of taxes or special assessment liens is unknown, the portion of the current taxes attributable to the period of the fiscal year that ends on the day before the date of apportionment shall be ascertained by the auditor on a pro rata basis of the previous year's taxes, and shall be paid to the tax collector. The auditor shall adjust the assessment roll and the tax charge accordingly.

History.—Stats. 1988, Ch. 830, in effect January 1, 1989, deleted “or, if unpaid for any reason, shall be transferred to the unsecured roll pursuant to Section 5090 and are collectible from either the person from whom the property was acquired or the public entity that acquired the property” after “eminent domain” in subdivision (a) and added subdivision (c).

Note.—Section 31 of Stats. 1988, Ch. 830, provided that this act shall be applicable to the 1989-90 fiscal year and fiscal years thereafter.

5086.1. Cancellation on date of apportionment. The auditor shall cancel taxes on the date of apportionment provided in the notice required by Section 5082.1.

History.—Added by Stats. 1985, Ch. 650, effective January 1, 1986.

5087. Optional payment plan. The board of supervisors of a county may provide that all unpaid taxes, penalties, and costs and the allocable portion of current taxes, penalties, and costs computed in accordance with this article shall not be paid through escrow at the close of escrow or from the award in eminent domain, but shall be transferred to the unsecured roll pursuant to Section 5090 and are collectible from the person from whom the property was acquired.

5088. Taxes not transferred to unsecured roll. Notwithstanding any other provision of this article, unpaid taxes, penalties, or costs shall not be transferred to the unsecured roll with respect to property that has become subject to a power of sale pursuant to Section 3691.

History.—Added by Stats. 1979, Ch. 31, effective January 1, 1980; Stats. 1985, Ch. 316, effective January 1, 1986 substituted “become subject to . . . Section 3691” for “been tax dedeed to the state for delinquency” after “that has”.

5089. Cancellation of taxes if less than \$10.00. The board of supervisors of a county may prescribe that, where the amount of unpaid taxes, penalties, and costs to be transferred to the unsecured roll pursuant to this

article is less than twenty dollars (\$20) with respect to a given fiscal year, the unpaid taxes, penalties, and costs shall be canceled rather than transferred to the unsecured roll.

History.—Stats. 1991, Ch. 532, in effect January 1, 1992, substituted “twenty dollars (\$20) with respect to a given fiscal year” for “ten dollars (\$10)” after “less than”.

5090. Taxes not subject to cancellation. (a) If taxes, penalties, and costs that are not subject to cancellation pursuant to this article are unpaid at the time set for the declaration of default of property on the secured roll, they shall be transferred to the unsecured roll pursuant to Section 2921.5, and collected as provided therein.

(b) The statute of limitations on any suit brought to collect taxes, penalties, and costs transferred to the unsecured roll commences to run on the date of transfer, which date shall be entered on the unsecured roll by the auditor opposite the name of the assessee at the time the transfer is made.

(c) The amount of taxes, penalties, and costs collectible on the unsecured roll from a public entity pursuant to this article shall not exceed the amount paid for the property or awarded in the proceeding.

(d) The person from whom the property was acquired is liable to the public entity that acquired the property for any taxes, penalties, and costs collected on the unsecured roll from the public entity.

History.—Added by Stats. 1979, Ch. 31, effective January 1, 1980; Stats. 1985, Ch. 316, effective January 1, 1986, substituted “declaration of default” for “sale” after “set for the” deleted “to the state” after “secured roll” in subdivision (a).

5091. Required notice by public entity. (a) If a public entity proposes to acquire property for a public use that will make the property exempt from taxation, the public entity shall give notice to the county tax collector and to any public entities whose taxes are not collected by the county tax collector but who at the time exercise the right of assessment and taxation.

(b) The notice shall be given within a reasonable time following the initial budgeting of funds for the proposed acquisition, and shall state all of the following:

(1) The approximate extent of the proposed project.

(2) The estimated time of completion of all acquisitions necessary for the proposed project.

(c) This section creates no rights or liabilities and does not affect the validity of any property acquisitions by negotiated purchase or eminent domain.

CHAPTER 5. REFUNDS

- Article 1. Refunds Generally. §§ 5096–5108.
2. Payment under Protest and Suit to Recover. §§ 5136–5143. [Repealed.]
 2. Refund Actions by Taxpayers. §§ 5140–5149.5.
 - 2.5. Interest on Refunds. §§ 5150–5153.
 3. Action by Public Agency. § 5161.
 - 3.5. Scope of Judicial Review of Assessments in Refund Actions. § 5170.
 4. Disputes over valuation of state-assessed property. § 5180.

Article 1. Refunds Generally

- § 5096. Refunds permissible.
- § 5096.1. Refunds; annexation without detachment proceedings.
- § 5096.3. Refunds to State or other public agencies. [Repealed.]
- § 5096.3. Tax credits; airlines.
- § 5096.5. Refunds for retroactive exemptions.
- § 5096.7. Refund to person paying the tax.
- § 5096.8. Refund due to reduction in base year value.
- § 5097. Conditions.
- § 5097.01. Property on 1975–76 roll subject to escape assessment; claim for refund. [Repealed.]
- § 5097.02. Contents of claim for refund.
- § 5097.03. Amount not in dispute not to be impounded.
- § 5097.1. Refunds by tax collector. [Repealed.]
- § 5097.2. Limitations on refunds.
- § 5098. Court actions; refunds.
- § 5098.5. Court actions; interest.
- § 5098.6. Court actions; refunds. [Repealed.]
- § 5099. Other revenue districts, etc.
- § 5100. Settlement with State.
- § 5101. Revenue districts' liability.
- § 5102. Unclaimed amounts.
- § 5103. Refunds by holders of tax certificates. [Repealed.]
- § 5103. Refunds as tax credits.
- § 5104. Reduction in value refunds; payee.
- § 5106. Recovery of penalties, interest and costs.
- § 5107. "Taxes" defined.
- § 5108. Interest payable. [Renumbered.]
- § 5108. Economic revitalization manufacturing property—property tax rebate.

5096. Refunds permissible. Any taxes paid before or after delinquency shall be refunded if they were:

- (a) Paid more than once.
- (b) Erroneously or illegally collected.
- (c) Illegally assessed or levied.

(d) Paid on an assessment in excess of the ratio of assessed value to the full value of the property as provided in Section 401 by reason of the assessor's clerical error or excessive or improper assessments attributable to erroneous property information supplied by the assessee.

(e) Paid on an assessment of improvements when the improvements did not exist on the lien date.

(f) Paid on an assessment in excess of the equalized value of the property as determined pursuant to Section 1613 by the county board of equalization.

(g) Paid on an assessment in excess of the value of the property as determined by the assessor pursuant to Section 469.

History.—Stats. 1941, p. 2114, in effect September 13, 1941, deleted reference to penalties and costs and substituted “paid before or after delinquency” for “heretofore or hereafter paid.” Stats. 1963, p. 4343, in effect September 20, 1963, added subsection (e). Stats. 1966, p. 682 (First Extra Session), in effect October 6, 1966, substituted “ratio of assessed value to the cash value of the property as provided in Section 401” for “cash value of the property” and added to subsection (c) last clause beginning with “or excessive”; and in subsection (e), deleted “cash” and “or a tax appeals board”, and added “Section 1611 or.” Stats. 1974, Ch. 311, p. 618, in effect January 1, 1975, substituted “full value” for “cash value” in subsection (c). Stats. 1976, Ch. 499, p. 1239, in effect January 1, 1977, relettered the former subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and added subsection (c). Stats. 1977, Ch. 246, in effect January 1, 1978, substituted “1630” for “1611 or Section 1760” in subsection (f). Stats. 1977, Ch. 921, in effect January 1, 1978, substituted “Section 1613” for Section “1630”. Stats. 1978, Ch. 732, in effective January 1, 1979, added subdivision (g). Stats. 1991, Ch. 532, in effect January 1, 1992, substituted “Any” for “On order of the board of supervisors, any” before “taxes” in the first paragraph. Stats. 1992, Ch. 427, in effect January 1, 1993, added “the” after “supplied by” in subdivision (d).

Note.—Section 15 of Stats. 1976, Ch. 499, p. 1244, provided that the provisions of this act shall be operative with respect to taxes which become due and payable on or after the lien date in 1977.

Construction.—In general.—This section is remedial and should be liberally construed to carry out its intent and object of preventing the inequitable retention by the county of money which has been improperly collected. *Hayes v. Los Angeles County*, 99 Cal. 74; *Pacific Coast Co. v. Wells*, 134 Cal. 471; *Midstate Theatres, Inc. v. Board of Supervisors*, 46 Cal.App.3d 204; *Focus Cable of Oakland, Inc. v. Alameda County*, 173 Cal.App.3d 519. It is applicable regardless of whether the taxes were paid involuntarily or under protest. *Stewart Law & Collection Co. v. Alameda County*, 142 Cal. 660. The remedies given by this and by the following article are cumulative. *Birch v. Orange County*, 186 Cal. 736.

This section does not require that to justify a refund the taxes must be erroneous or illegal, but only that they have been “erroneously or illegally collected” and consequently personal property taxes which were legally due, but improperly exacted of a claimant as a condition to redemption of real property owned by him, were recoverable under this section. *Evans v. San Joaquin County*, 67 Cal.App.2d 452. Although a valuation dispute was presented when the assessor entered an escape assessment, after the assessor conducted a new audit and appraisal and the parties agreed upon the true value of the taxpayer’s property, no dispute existed and thus, it was proper for the board of supervisors to refund an overpayment of tax pursuant to this section. *Focus Cable of Oakland, Inc. v. Alameda County*, 173 Cal.App.3d 519.

Division 1, Part 9, Chapter 5, of this code applies only to the recovery of property taxes and not to license taxes or fines. *Bainbridge v. Riverside County*, 167 Cal.App.2d 418.

Public Utility Company.—A public utility company with real property in several counties seeking to reduce the assessment of such property can choose a target forum and, in the event that it receives a favorable judgment, can obtain refunds from the remaining counties under this section. *Pacific Gas & Electric Co. v. State Board of Equalization*, 27 Cal.3d 277.

Mandamus.—The action of the board of supervisors under this section is judicial and therefore, the decision of the board may not be controlled by mandamus. *Younger v. Board of Supervisors*, 68 Cal. 241. When a claim has been properly allowed by the board of supervisors, mandamus will lie against the auditor to compel payment. *Pacific Coast Co. v. Wells*, *supra*. If, however, the order of the supervisors is improper because a claim was not filed within the time required by law, it is the duty of the auditor to disregard it. *Perrin v. Honeycutt*, 144 Cal. 87; *Murphy v. Bondshu*, 2 Cal.App. 249.

A taxpayer may obtain a writ of mandate to compel a county board of supervisors to formally reject or otherwise act upon its claim for refund of property taxes paid. *Signal Oil & Gas Co. v. Bradbury, et al.*, 183 Cal.App.2d 40.

Failure to act is a rejection.—The nonaction of the board for a period exceeding six months following the filing of a claim under this article amounts to a rejection and authorizes an action to recover the amount of the claim. *Otis v. San Francisco*, 170 Cal. 98.

Revenue districts.—Parties defendant.—In actions to enforce rights under this section the county is authorized to appear and defend on behalf of the entities whose taxing functions have been consolidated with those of the county, and it is not necessary that such entities be made parties defendant. It is doubtful if the foregoing rule can be affected by a municipal ordinance providing that all suits for the refund of city taxes must be brought against the city and be defended by the city attorney. *Los Angeles County v. Superior Court*, 17 Cal.2d 707.

Claim not barred by application to county board of equalization.—The fact that an owner files an application for a reduction in an assessment does not bar a claim for refund on the ground that the property in question is exempt from taxation, at least when the refund claim is filed prior to the appearance before the board. *Pasadena Playhouse Assn. v. Los Angeles County*, 69 Cal.App.2d 611.

Other recoverable payments.—Delinquent special assessments paid after all outstanding improvements bonds were purchased by the county and delivered to the special assessment district for cancellation pursuant to legislation enacted for the relief of property owners in distressed assessment districts may be recovered under this section. *S. Siwel Co. v. County of Los Angeles*, 27 Cal.2d 724; *Himes v. Los Angeles County*, 27 Cal.2d 891.

Subdivision A

Double payment.—If a tax sale is void because the taxes had been paid by the owner, the amount paid by the purchaser may be recovered under this section. *Hayes v. Los Angeles County*, 99 Cal. 74.

Subdivision B

Excessive valuation.—Overpayments of tax resulting from an excessive assessment are not recoverable under this section. The property owner's only remedy in such cases is by application to the county board of equalization, even though the property is entirely without taxable value. *Los Angeles etc., Corp. v. Los Angeles County*, 22 Cal.App.2d 418. Taxes on solvent credits are not "erroneously or illegally collected" within the meaning of this section by reason of the refusal of the assessor to allow the entire deduction due on account of debts. Such a situation presents merely a case of overvaluation. *Southern California Hardwood, etc. Co. v. Los Angeles County*, 49 Cal.App. 712.

On the other hand, a recovery will be allowed if the over-assessment results from an error in the property statement furnished the assessor. *Pacific Coast Co. v. Wells*, 134 Cal. 471; *Associated Oil Co. v. Orange County*, 4 Cal.App.2d 5.

Furthermore, a tax is "illegally collected" within the meaning of this section if the property owner's application to the board of equalization is heard by less than a majority of the board or if the denial of the application is based on evidence taken out of his presence. *Bandini Estate Co. v. Los Angeles County*, 28 Cal.App.2d 224.

Other recoverable payments.—Taxes paid by a city upon lands annexed by it (*City of Long Beach v. Board of Supervisors*, 50 Cal.2d 674); overpayments resulting from a excessive and illegal tax rate (*Connelly v. San Francisco*, 164 Cal. 101, and *Otis v. Los Angeles County*, 9 Cal.2d 366); penalties illegally exacted from a redemptioner (*Palomares Land Co. v. Los Angeles County*, 146 Cal. 530); and taxes erroneously paid by the holder of a certificate of purchase of lieu lands (*Slade v. Butte County*, 14 Cal.App. 453) may be recovered under this section.

Void tax sales.—This section confers no rights upon the purchaser at a void tax sale except in cases covered by the previous subdivision. In other cases the purchaser must proceed in accordance with Section 3729. See *Brooks v. Tulare County*, 117 Cal. 465.

Voluntary Payment.—A person paying tax on land he does not own is a volunteer and is not entitled to a refund under this section. Erroneous collection does not include erroneous payment. *Sierra Investment Corp. v. Sacramento County*, 252 Cal.App.2d 339.

Subdivision C

Clerical error.—A clerical error results from an incorrect figure or word inadvertently used, and not from the erroneous exercise of judgment or discretion. Thus, an overpayment resulting from the deliberate and intentional use by the assessor of an erroneous figure or method of valuation presents merely a case of overvaluation, the remedy for which is by application to the board of equalization. *Kuhlemeier v. Los Angeles County*, 2 Cal.2d 257; *Los Angeles etc. Corp. v. Los Angeles County* 22 Cal.App.2d 418.

The term "actual cash value" as used in former Political Code Section 3804 and determined by county assessor to be 50 percent of appraised value, did not mean something greater than "full cash value" as used in former Political Code Section 3627. Thus, where property was assessed in excess of its full cash value due to clerical error, refund could not be withheld on the ground that the assessment was not in excess of the actual cash value. *Orpheum Circuit, Inc. v. Los Angeles County*, 12 Cal.App.2d 257.

5096.1. Refunds; annexation without detachment proceedings.
Except as hereinafter provided, taxes collected on behalf of a local agency from a taxpayer whose property has been annexed to a second local agency but was not detached from the first local agency due to error or inadvertence shall be deemed to have been erroneously collected for purposes of Section 5096 if the governing board of the first local agency makes a finding by resolution that detachment proceedings were not commenced due to excusable neglect. If the first local agency is a fire protection district the governing body of the annexing agency may make the finding by resolution that detachment proceedings were not commenced following annexation due to excusable neglect. For purposes of determining the amount of the refund the property shall be deemed to have been detached from the first local agency on the date annexation proceedings were completed.

This section shall not apply to taxes which would be collectible under authority of Government code Section 56492 even though the annexed property had been detached from the special district.

History.—Added by Stats. 1974, Ch. 707, p. 1579, in effect September 6, 1974. Stats. 1976, Ch. 164, p. 271, in effect May 12, 1976, substituted "local agency" for "special district", substituted "second local agency" for "city", and substituted "first local agency" for "special district", in the first sentence; substituted "first local agency" for "special district", and substituted "agency" for "city" in the second sentence; and substituted "first local agency" for "special district" in the third sentence of the first paragraph.

Note.—Section 2 of Stats. 1974, Ch. 707, p. 1580, provided no payment by state to local governments because of this act. Section 2 of Stats. 1976, Ch. 164, p. 271, provided that there are no state-mandated local costs imposed on local governments by this act.

5096.3. Refunds to state or other public agencies. [Repealed by Stats. 1979, Ch. 31, in effect January 1, 1980.]

5096.3. Tax credits; airlines. (a) To dispose of certain lawsuits and assessment appeals that have been filed, and to preclude the filing of other claims relating to (1) the assessment, equalization, and assessability of certain possessory interests in publicly owned airports and (2) aircraft valuation and equalization by Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Federal Express Corporation, Northwest Airlines, Inc., Trans World Airlines, Inc., United Airlines, Inc., United Parcel Service, U.S. Airways, Inc., Wings West Airlines, Southwest Airlines, America West Airlines, in their own right or as successors in interest, counties shall provide future tax credits in the following amounts:

Alameda	\$ 4,455,110
Contra Costa	1,000
El Dorado	1,000
Fresno	264,630
Humboldt	500
Kern	33,540
Los Angeles	18,335,720
Monterey	148,560
Orange	2,916,995
Riverside	435,780
Sacramento	1,070,185
San Bernardino	1,991,405
San Diego	4,262,610
San Joaquin	1,000
San Mateo	13,544,005
Santa Barbara	167,880
Santa Clara	2,369,080
Solano	1,000

(b) The credits identified in subdivision (a) will be allowed in equal amounts for the 1998-99 fiscal year to the 2002-03 fiscal year, inclusive, and may be credited by the counties against one or more tax bills of the airline entitled to the credit. The credits identified in subdivision (a) shall be allocated among the airlines in accordance with a schedule to be established and agreed upon by the airlines identified in subdivision (a). The airlines shall, through a designated representative, provide to each county listed in subdivision (a), before the effective date of this measure, the detail of the allocation of the credits among the various airlines. In no instance shall a county be required to provide a credit to any airline in any year that exceeds the total tax due from that airline to that county for that year. The airlines' designated representative may submit revised instructions not later than June 30 preceding the beginning of the fiscal year in which the credits are to be

adjusted, but in no event may the credit for any county in any year be increased beyond the levels set out in subdivisions (a) and (b) for any fiscal year.

(c) In addition to the credits provided in subdivision (a), each county shall allow a credit against any escape assessment upon certificated aircraft levied on or after April 1, 1998, under subdivision (b) of Section 401.15 for tax years up to and including the 1997–98 fiscal year to the extent the escape assessment is based upon the cost established in sale/leaseback or assignment of purchase rights transaction. The amount of the credit shall be equal to the tax on one-half of the value increase, plus interest and penalties attributable to use of the sale/leaseback or assignment of purchase rights transaction amount to determine value pursuant to subdivision (b) of Section 401.15.

(d) Upon enrollment of any escape assessment contemplated in subdivision (a) of Section 401.15, the county assessor shall provide the county auditor with the information necessary to calculate the credit required in subdivision (c) of this section.

(e) No county shall be required to provide the credits specified in subdivisions (a) and (b) unless all airlines named in subdivision (a) who also have assessments in that county have entered into a settlement agreement or executed a waiver with that county. No county shall be required to provide the credits specified in subdivision (c) unless the airline otherwise entitled to that credit has entered into a settlement agreement or executed a waiver with that county. The settlement agreement or waiver shall include a waiver of all statutory and constitutional rights with respect to pending and future challenges to valuation and equalization of certificated aircraft through the 2003–04 fiscal year, provided that the assessments are established in conformance with Section 401.15, and all statutory and constitutional rights to challenge valuation, equalization and assessability of possessory interests in publicly owned airports (other than interests stated in a written agreement for terminal, cargo, hangar, automobile parking lots, storage and maintenance facilities, and other buildings and the land thereunder leased in whole or in part by an airline), provided that the valuations made for the 1998–99 fiscal year and thereafter are established in conformance with Section 107.9. At the discretion of a county, the airlines may be required to file waivers in that county in lieu of entering into a settlement agreement. Upon the execution of a settlement agreement or waiver by the airlines named in subdivision (a) that also have assessments in a county, that county listed in subdivision (a) shall be required to provide the credits set out in this section. Nothing in this section precludes claims concerning allocation of aircraft values.

(f) With respect to America West Airlines only, the waiver or settlement agreement required by subdivision (e) may exclude the claims that America West Airlines has already raised in the adversary proceedings in the bankruptcy proceeding entitled “In Re America West Airlines, Inc., Case No. 91–07505 PHX-RGM” against the Counties of Orange, San Bernardino, Sacramento, San Mateo, Alameda, and San Diego, provided that the

settlement agreements or waivers under subdivision (e) provide that the resolution of any of America West's adversary claims will have no legal effect for any tax year not at issue in those adversary proceedings. This section and Sections 107.9 and 401.15 do not abrogate, rescind, preclude, or otherwise affect any separate settlement agreement entered into prior to the effective date of this section between a county and an airline concerning the subject matter of this section and Sections 107.9 and 401.15 with respect to those tax years expressly settled by any agreement as so described. However, no settlement agreement as so described may be used to challenge the assessment and valuation provided by these sections for any tax year after the 1997–98 fiscal year or any tax year not expressly settled by that agreement.

History.—Added by Stats. 1998, Ch. 86 (AB 1807), in effect June 30, 1998.

Note.—Section 4 of Stats. 1998, Ch. 86 (AB 1807) provided that the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique legal, fiscal, and administrative issues faced by the counties specified in this act with respect to unresolved disputes in those counties concerning the proper taxation of certificated aircraft.

Section 6 thereof provided that this act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

This measure is necessary to provide guidance and clarification that is essential to the fair and efficient taxation of airline industry property and possessory interests in publicly owned airports in the current year, and to clarify the status of prior-year property tax payments that have funded essential services provided by local governments and schools.

5096.5. Refunds for retroactive exemptions. Any taxes paid which were not erroneously or illegally collected under the law as it existed at the time of collection, but for which an exemption is provided by a retroactive constitutional amendment, shall be refunded after compliance with the provisions of this article, except that the claim for refund may be filed at any time within four years after the date such amendment became effective, or the date that this section became effective, whichever is later.

History.—Added by Stats. 1957, p. 2800, in effect September 11, 1957. Stats. 1976, Ch. 156, p. 254, in effect January 1, 1977, substituted "four" for "three". Stats. 1991, Ch. 532, in effect January 1, 1992, substituted "Any" for "On order of the board of supervisors, any" before "taxes".

Note.—Stats. 1957, p. 2800, adding Section 5096.5, declares it is the intention of the Legislature to clarify the mode by which refunds may be made when tax exemption is retroactively granted by constitutional amendment.

5096.7. Refund to person paying the tax. If taxes have been paid on property acquired by negotiated purchase by any public entity designated in Section 5081 after the commencement of the fiscal year for which the taxes are a lien on the property, the portion of such taxes which are allocable to that part of the fiscal year which begins on the date of apportionment determined pursuant to Section 5082 and made uncollectible if unpaid by virtue of Section 5086, shall be deemed erroneously collected and shall be refunded to the person who has paid the tax, where the person was not otherwise reimbursed for that portion of the taxes by the public entity which acquired the property.

Refunds under this section shall be applicable to taxes paid on either the secured or unsecured rolls.

History.—Added by Stats. 1963, p. 1485, in effect September 20, 1963. Stats. 1968, p. 894, in effect June 28, 1968, revised language to include property purchased by the United States. Stats. 1976, Ch. 156, p. 255, in effect January 1, 1977, substituted "(b)" for "(2(a))" in the first sentence of the first paragraph. Stats. 1979, Ch. 31, in effect January 1, 1980 substituted "Section 5081" for "subdivision (b) of Section 4986," "apportionment determined pursuant to Section 5082" for "the acquisition of the property," "5086" for "4986" and added "the" before "person".

5096.8. Refund due to reduction in base year value. (a) In the case where a reduction in a base year value of real property results in a supplemental assessment for the value of the reduction being levied and charged to a subsequent owner of that property, that portion of any refund, due and owing to a former owner of that property, in the amount of the taxes on the reduction in base value after the former owner sold or transferred ownership of the property, shall be applied to satisfy that supplemental assessment.

(b) Any person claiming a refund due to a reduction in base year value shall certify under penalty of perjury whether he or she has sold or transferred ownership of the property to any other person, and if so, the date of sale or transfer.

(c) This section shall not apply in any county unless the board of supervisors adopts a resolution by majority vote to make the provisions of this section applicable in the county.

History.—Added by Stats. 1990, Ch. 974, in effect January 1, 1991.

5097. Conditions. (a) No order for a refund under this article shall be made, except on a claim:

(1) Verified by the person who paid the tax, his or her guardian, executor, or administrator.

(2) Filed within four years after making of the payment sought to be refunded or within one year after the mailing of notice as prescribed in Section 2635, or the period agreed to as provided in Section 532.1, whichever is later.

(b) An application for a reduction in an assessment filed pursuant to Section 1603 shall also constitute a sufficient claim for refund under this section if the applicant states in the application that the application is intended to constitute a claim for refund. If the applicant does not so state, he or she may thereafter and within the period provided in paragraph (2) of subdivision (a) file a separate claim for refund of taxes extended on the assessment which applicant applied to have reduced pursuant to Section 1603 or Section 1604.

(c) If an application for equalization of an escape assessment is filed pursuant to Section 1603, a claim may be filed on any taxes resulting from the escape assessment or the original assessment to which the escape relates within the period provided in paragraph (2) of subdivision (a) or within 60 days from the date the board of equalization makes its final determination on the application, whichever is later.

History.—Stats. 1963, p. 4344, in effect September 20, 1963, added the second paragraph. Stats. 1966, p. 682 (First Extra Session), in effect October 6, 1966, added "Section 1607 or" to the second paragraph. Stats. 1967, p. 2118, in effect November 8, 1967, added "or within one year . . . whichever is later," after "refunded" in subsection (b); and added everything after "refund under this section" in the first sentence of the second paragraph; and added the second sentence of the second paragraph. Operative as to any payment made more than once prior to effective date and to any payment made after. Stats. 1970, p. 1037, in effect November 23, 1970, substituted "four" for "three" in subsection (b) of the first paragraph. Stats. 1975, Ch. 224, p. 605, in effect January 1, 1976, substituted "Section 1603" for "Section 1607 or Section 1760" in the first sentence of the second paragraph. Stats. 1976, Ch. 499, p. 1239, in effect January 1, 1977, substituted "Section 1603 or Section 1604" for "Section 1607 or Section 1760" in the second sentence of the second paragraph. Stats. 1978, Ch. 732, in effect January 1, 1979, designated the first sentence of the first paragraph as subdivision "(a)", the second sentence as "(a)(1)" in place of (a), the third sentence as "(a)(2)" in place of (b). Substituted the second paragraph as subdivision "(b)" substituted "provided in paragraph (2) of subdivision (a)" for "provided in subdivision (b)", and added subdivision (c). Stats. 1983, Ch. 1224, in effect January 1, 1984, added "or the period agreed

to as provided in Section 532.1,” after “Section 2635,” in subdivision (a)(2). Stats. 1984, Ch. 946, in effect September 10, 1984, added subdivision (d). Stats. 1987, Ch. 1184, in effect January 1, 1988, operative July 1, 1988, added “or her” after “his”, in subdivision (a)(1); added “or she” following “he” in the second sentence of subdivision (b); and deleted former subdivision (d), which pertained only to refunds of property taxes levied by the City of Fresno.

Necessity for claim.—Correction of a base-year value under Section 51.5 does not automatically entitle the taxpayer to a refund. Refunds are governed by separate statutes, and the taxpayer may only recover a refund by complying with those statutes. *Sunrise Retirement Villa v. Dear*, 58 Cal.App.4th 948.

Verification.—Substantial compliance with the requirement that a claim for refund be verified by the person who paid the tax is achieved if representatives of the class verify the claim for refund for the class. *Schoderbek v. Carlson*, 113 Cal.App.3d 1029. (Disapproved by *Woosley v. State of California*, 3 Cal.4th 758.) Although taxpayers’ refund claims were improperly signed by their attorney rather than by them, and hence, were not properly verified, the defect was not fatal to taxpayers’ claims; therefore, taxpayers properly exhausted their administrative remedies. Generally, the object of a verification is to assure good faith in the averments or statements of a party. Where there is no allegation of counsel’s bad faith, a claim of inadequate verification is without merit. *Mission Housing Development Company v. City and County of San Francisco*, 59 Cal.App.4th 55.

Class action.—Class actions for refunds of taxes are not authorized unless specifically provided for by statute. *Woosley v. State of California*, 3 Cal.4th 758.

This section does not provide for a class action. *Neecke v. City of Mill Valley*, 39 Cal.App.4th 946. (This decision construed *Woosley v. State of California*, 3 Cal.4th 758 as overruling *Schoderbek v. Carlson*, 113 Cal.App.3d 1029.)

Interest.—There is no implied contract that interest will be paid on all claims for refund. Interest may be paid only pursuant to a specific statute. *Ball v. Los Angeles County*, 82 Cal.App.3d 312, cert. den. 439 U.S. 1116.

Statute of limitations.—Claims for refunds of taxes erroneously collected must be made, in the case of installment payments, within three years from the date of payment of the last installment. *McDougall v. Marin County*, 208 Cal.App.2d 65. Unless a taxpayer states in an application for reduction of assessment that the application is intended to constitute a claim for refund, under this section, the taxpayer must file a separate refund claim within four years of paying the tax. Thus, a claim for refund filed on November 19, 1986, was not timely for taxes paid prior to November 19, 1982. *Osco Drug, Inc. v. Orange County*, 221 Cal.App.3d 189.

Taxpayers were required to meet the four-year limitation period of subdivision (b), even though they were awaiting a decision by the assessment appeals board on their applications for reduction in assessment, which were timely filed. *Mission Housing Development Company v. City and County of San Francisco*, 59 Cal.App.4th 55. Where taxpayer asserts entitlement to a refund because of exemption from ad valorem taxes under the “welfare exemption” pursuant to Section 268, he is not excused from filing his claim for refund within the three-year period. *Hartford v. Los Angeles County*, 218 Cal.App.2d 613.

The language of subdivision (b) is clear that the limitation period commences on the “making of the payment” and not on the date the tax becomes delinquent. The right to offset, under Code Civ. Proc., section 431.70, claims for refund of liability for previous years is independent of the right to a refund under subsection (b). *Singer Co. v. Kings County*, 46 Cal.App.3d 852.

Application.—This section has no application to a claim for refund of personal property taxes erroneously assessed by a City to a taxpayer. *Pasadena Hotel Development Venture v. City of Pasadena*, 119 Cal.App.3d 412.

Note.—The cases *McDougall v. Marin County*, 208 Cal.App.2d 65, and *Hartford v. Los Angeles County*, 218 Cal.App.2d 613, construed Section 5097 when the three-year period of limitations was applicable; however, Stats. 1970, Ch. 540, in effect November 23, 1970, extended the period of limitations to four years.

5097.01. Property on 1975–76 roll subject to escape assessment; claim for refund. [Repealed by Stats. 1980, Ch. 103, in effect May 20, 1980, operative January 1, 1981.]

5097.02. Contents of claim for refund. The claim shall be in writing, specifying:

(a) Whether the whole assessment is claimed to be void or, if only a part, what portion.

(b) The grounds on which the claim is founded.

History.—Added by Stats. 1976, Ch. 499, p. 1240, in effect January 1, 1977.

Note.—Section 15 of Stats. 1976, Ch. 499, p. 1244, provided that the provisions of this act shall be operative with respect to taxes which become due and payable on or after the lien date in 1977.

Construction.—While taxpayer did not specify Revenue and Taxation Code Section 533 as the basis for its claim for refund or for its complaint, since its claim for refund was written in accordance with Sections 5096 and 5097 of the Code and discussed all material facts that had occurred up until that point in time, and since the same facts were set forth in the complaint, it was always clear from the facts presented that taxpayer was claiming it had been erroneously assessed in the original assessment. *Focus Cable of Oakland, Inc. v. Alameda County*, 173 Cal.App.3d 519.

5097.03. Amount not in dispute not to be impounded. When a claim for refund of taxes is filed, the amount of tax computed on the portion of the assessment not in dispute shall not be impounded.

History.—Added by Stats. 1976, Ch. 499, p. 1240, in effect January 1, 1977.

Note.—Section 15 of Stats. 1976, Ch. 499, p. 1244, provided that the provisions of this act shall be operative with respect to taxes which become due and payable on or after the lien date in 1977.

5097.1. Refunds by tax collector. [Repealed by Stats. 1983, Ch. 1211, in effect January 1, 1984.]

5097.2. Limitations on refunds. Notwithstanding Sections 5096 and 5097, any taxes paid before or after delinquency may be refunded by the county tax collector or the county auditor, within four years after the date of payment, if:

- (a) Paid more than once.
- (b) The amount paid exceeds the amount due on the property as shown on the roll.
- (c) The amount paid exceeds the amount due on the property as the result of corrections to the roll or cancellations after those taxes were paid.
- (d) In any other case, where the claim for refund is made under penalty of perjury and is for an amount less than ten dollars (\$10).
- (e) The amount paid exceeds the amount due on the property as the result of a reduction attributable to a hearing before an assessment appeals board or an assessment hearing officer.

History.—Added by Stats. 1965, p. 2665, in effect September 17, 1965. Stats. 1976, Ch. 156, p. 255, in effect January 1, 1977, substituted “four” for “three”. Stats. 1983, Ch. 1211, in effect January 1, 1984, added “the county tax collector or” after “by” in the first sentence, and added subsection (e). Stats. 1984, Ch. 946, in effect September 10, 1984, added subdivision (f). Stats. 1987, Ch. 1184, in effect January 1, 1988, operative July 1, 1988, deleted “the provisions of” after “Notwithstanding”, and deleted “the county tax collector or” after “refunded by” in the first sentence; and deleted “(f) A refund is ordered by a final decision of a court of competent jurisdiction, whether by final decision of the Supreme Court or a court of appeal of this state or by judgment of trial court becoming final without any appeal, and the taxes paid were either of the following:

- (1) Erroneously or illegally collected.
- (2) Illegally assessed or levied.

Refunds made in accordance with this subdivision on taxes paid shall include interest at the statutory rate for property tax refunds on the amount refunded. That interest shall be computed from the date the taxes were paid to the date of the court’s judgment. After judgment, interest shall accrue at the statutory rate for judgments.

This subdivision shall be applicable only to refunds of property taxes levied by the City of Fresno. This subdivision shall be applicable only through June 30, 1986.” Stats. 1988, Ch. 440, in effect January 1, 1989, added “county tax collector or the” before “county auditor” in the first sentence. Stats. 1991, Ch. 532, in effect January 1, 1992, deleted “ordered by the board of supervisors” after “cancellations” and substituted “those” for “such” after “after” in subdivision (c); and deleted “, with the written consent of the district attorney” after “ten dollars (\$10)” in subdivision (d).

5098. Court actions; refunds. In the event of a determination by a final decision of the Supreme Court of the State of California or Court of Appeal of the State of California that the maximum tax rate applicable to property assessed on the 1978–79 unsecured roll was that prescribed by Article XIII A of the Constitution or Section 2237, then notwithstanding any other provisions of this chapter, the county auditor of a county which levied a tax rate for the 1978–79 fiscal year on property on the unsecured roll in excess of that maximum tax rate may refund the excess tax collected and include interest as provided in Section 5098.5 to the assessee shown on that

unsecured roll without a prior hearing by, or the prior approval of, the board of supervisors, whether or not a refund claim has been filed by the person who paid the taxes.

History.—Added by Stats. 1980, Ch. 60, in effect April 11, 1980.

5098.5. Court actions; interest. Notwithstanding any other provisions of this chapter, where taxes were collected on the 1978-79 unsecured roll based on a tax rate which pursuant to a final decision of an appellate court or the Supreme Court was determined to be in excess of the rate required by Article XIII A of the Constitution, or Section 2237, refunds of taxes paid by the auditor pursuant to Section 5098, shall, upon approval of the board of supervisors, include interest, at the rate of 6 percent per annum, on the amount refunded, such interest to be computed from September 1, 1978, or the date the taxes were paid, whichever is later, to the date the refund is made.

History.—Added by Stats. 1980, Ch. 60, in effect April 11, 1980.

5098.6. Court actions; refunds. [Repealed by Stats. 1984, Ch. 1261, in effect January 1, 1985.]

5099. Other revenue districts, etc. The refund ordered by the board of supervisors may include county taxes and taxes collected by county officers for a city or revenue district.

History.—Stats. 1941, p. 2114, in effect September 13, 1941, added “ordered by the board of supervisors” after “refund” and substituted “County taxes and taxes collected by county officers for a city or revenue district” for “Amounts levied for any revenue district” in subsection (b). Stats. 1957, p. 769, in effect September 11, 1957, deleted “(a) A portion of amounts paid to the State Treasurer by the county treasurer as money belonging to the State (b)” after “include” and combined the introductory provision with former subsection (b).

5100. Settlement with State. The part of the refund representing amounts paid to the State shall be paid from the county general fund and, when the auditor renders the report which he is required to make to the Controller showing the amount due the State as of the last day of the month preceding the settlement which the county treasurer is required to have with the Controller, the auditor shall certify this amount refunded to the Controller, in the form prescribed by the Controller. On the next settlement of the county treasurer with the State, the Controller, if satisfied of the legality of the refund, shall give the county treasurer credit for the State’s portion of the refund.

5101. Revenue districts’ liability. Refunds ordered by the board of supervisors under this article in respect of county taxes shall be paid by warrant drawn upon the appropriate fund by the county auditor. Refunds ordered in respect of revenue districts, except chartered cities, may be paid by a warrant drawn by the county auditor, upon such available funds, if any, as the revenue district may have on deposit in the county treasury, or in the event such funds are insufficient, then out of funds subsequently accruing to such revenue district and on deposit in the county treasury. Refunds ordered in respect of chartered cities shall be paid in the manner provided for their

payment in the charter or ordinances of the city. Neither any county nor its officers shall refund amounts on behalf of a revenue district from county funds.

History.—Stats. 1941, p. 2114, in effect September 13, 1941, revised provisions relating to revenue districts and added provisions relating to counties and chartered cities.

Merger in judgments.—The above provisions merge in and become part of any judgment allowing a refund. *Los Angeles County v. Superior Court*, 17 Cal.2d 707.

5102. Unclaimed amounts. If any payment may be refunded under this article and no claim is filed within the time allowed, the payment may be transferred to the county general fund on order of the board of supervisors.

5103. Refunds by holders of tax certificates. [Repealed by Stats. 1996, Ch. 699, in effect January 1, 1997.]

5103. Refunds as tax credits. Notwithstanding any other provision of law, a taxpayer and the county or city and county may enter into a written settlement agreement to substitute credits against a taxpayer's future tax liabilities for the payment by the county or city and county to that taxpayer of refunds of tax and any interest accrued thereon. Interest may continue to accrue upon a substituted credit until that credit has been fully offset against future tax liabilities. The authority of a county or city and county to provide for tax credits in accordance with this section shall be vested in that branch of the county or city and county government that is authorized to settle legal disputes on behalf of the county or city and county.

History.—Added by Stats. 1998, Ch. 87 (SB 30), in effect January 1, 1999.

5104. Reduction in value refunds; payee. Any refund of taxes authorized pursuant to this article as a result of a reduction in the value of taxable property may be paid to the latest recorded owner of that property as shown on the tax roll, rather than to the individual or entity who paid the amount of tax to be refunded, if both of the following conditions are met:

(1) There has been no transfer of the property during or since the fiscal year for which the taxes subject to refund were levied.

(2) The amount of the refund is less than five thousand dollars (\$5,000).

History.—Added by Stats. 1996, Ch. 346, in effect January 1, 1997.

5106. Recovery of penalties, interest and costs. Where the taxes sought to be refunded or recovered have been paid after delinquency, the amount of penalties, interest or costs refundable or recoverable under this article shall be computed only on the taxes refunded or recovered.

History.—Added by Stats. 1941, p. 2116, in effect September 13, 1941.

5107. "Taxes" defined. As used in this article, "tax" or "taxes" includes penalties, interest, and costs.

History.—Added by Stats. 1941, p. 2116, in effect September 13, 1941.

5108. Interest payable. [Stats. 1976, Ch. 499, p. 1240, in effect January 1, 1977, renumbered the section as Section 5151.]

5108. Economic revitalization manufacturing property—property tax rebate. (a) For the 1994-95 fiscal year and each fiscal year thereafter, the governing body of a local agency shall have the authority, by a majority vote of that governing body, to rebate some or all of the property tax revenue that the local agency would receive from economic revitalization manufacturing property for a period of five fiscal years from the date the property was placed in service. For purposes of this section, a redevelopment agency shall obtain the approval, by a majority vote of the governing bodies of the city and the county in which the redevelopment agency is located, prior to having the authority to rebate some or all of that property tax revenue.

(b) For purposes of this section:

(1) “Economic revitalization manufacturing property” means tangible personal property that meets all of the following requirements:

(A) The property is directly involved in the manufacturing process in this state, and not in a preliminary or subsequent activity, or one incidental to manufacturing.

(B) Use of the property will lead to the creation of at least 10 new full-time manufacturing jobs or positions at salary levels of at least ten dollars (\$10) per hour (twenty thousand dollars (\$20,000) per year), and those jobs or positions will continue in existence for a continuous five-year period.

(C) A majority of the governing body of the local agency makes a finding, in its sole discretion, that the property is used in conjunction with the establishment or expansion of a manufacturing project or facility within the local agency’s jurisdiction, and that the property meets the requirements of subparagraphs (A) and (B). In this connection, a majority of the governing body is hereby authorized, but not required, to make the finding specified herein, and thereby authorize the rebate provided pursuant to this section.

(D) The property is “qualified property” for purposes of the manufacturing investment credit under subdivision (d) of Sections 17053.49 and 23649.

(2) “Manufacturing process” means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.

(3) “Ten or more new employees” means a net increase by 10 or more of the total number of employees, as defined in Section 621 of the Unemployment Insurance Code, employed by the taxpayer in this state. The increase in the total number of employees employed in this state shall be determined by subtracting the total number of employees the taxpayer employed in the previous fiscal year from the total number of employees the taxpayer employed in the current fiscal year. The total number of employees employed in this state shall equal the sum of both of the following:

(A) The total number of hours worked by employees in this state for the taxpayer who are paid an hourly wage divided by the applicable hours per workyear.

(B) The total number of months worked by salaried employees in this state for the taxpayer divided by the applicable months per workyear.

(4) “Applicable workyear” means with respect to a worker paid an hourly wage, 2,000 paid hours and, with respect to a salaried employee, a total of 12 paid months. The applicable workyear, in the case of a manufacturing project or facility that becomes operational during the year, shall be the amounts in the foregoing sentence multiplied by a fraction, the numerator of which is the number of months of the year that the project or facility was operational and the denominator of which is 12.

An employee shall be deemed to be employed at a manufacturing project or facility if he or she utilizes the project or facility as his or her principal place of business.

(5) “Local agency” means a city, county, city and county, redevelopment agency, or special district, excluding any school district.

(c) If at any time within five years after granting a rebate pursuant to this section, the governing body finds that the recipient taxpayer has not complied with the conditions of paragraph (1) of subdivision (b), the governing body may recapture from that taxpayer all or any portion of the amount rebated.

(d) This section shall apply only to property that is placed in service on or after January 1, 1994.

(e) (1) On or before January 1, 2002, the Legislative Analyst shall prepare a report for the Legislature, which shall include, but not be limited to, the following information with respect to this section:

(A) A list of local agencies that have utilized the tax rebate provisions.

(B) The dollars expended by each agency utilizing the tax rebate provisions.

(C) The number of jobs created by each of the local agencies utilizing the tax rebate provisions.

(D) A reasoned estimate of the number of jobs created that, but for these provisions, would have been located outside the state.

(E) A reasoned estimate of the number of jobs that, but for these provisions, would have been located in another jurisdiction within the state.

(2) By granting this tax rebate, the granting agency agrees to cooperate fully with the Legislative Analyst.

(3) Beginning in 2000, each participating agency shall provide the Legislative Analyst annually with a complete set of data for the program, including all of the information required in paragraph (1).

(4) The final report by the Legislative Analyst, provided pursuant to paragraph (1), shall include an analysis of the cost per job of jobs created pursuant to this section, a comparison of this program to other economic development tools, and a recommendation as to whether this program should be continued in its present form, restructured, or eliminated.

(f) A local agency may enter into an agreement with a taxpayer to implement this section and the agreement shall be valid notwithstanding the subsequent repeal of this section.

(g) Nothing in this section shall be deemed to eliminate or reduce the obligation of a redevelopment agency to comply with Section 33334.2, 33334.6, 33607.5, or 33607.7 of the Health and Safety Code.

(h) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

History.—Added by Stats. 1993, Ch. 868, in effect January 1, 1994. Stats. 1995, Ch. 204, in effect January 1, 1996, added the second sentence in subdivision (a); substituted “a net” for “an” after “means” in paragraph (3), and added “redevelopment agency,” after “city and county,” in paragraph (5) of subdivision (b); and added subdivisions (f) and (g). Stats. 1999, Ch. 274 (SB 943), in effect January 1, 2000, added paragraph (D) to subdivision (b) (1); substituted “workyear” for “work year” in subdivision (b)(3)(A) and (B) and in subdivision (b)(B)(4); substituted subdivision (e) for former subdivision (e), which provided that the section would remain in effect only until January 1, 2000; and added subdivision (h).

Note.—Section 1 of Stats. 1993, Ch. 868, provided that the Legislature finds and declares the following:

(a) Tax incentive proposals, when specifically targeted and carefully drawn up, may be a significant force in spurring economic development in California. The Legislature has found in its meetings with California businesses from across the state that tax incentives may assist in retaining business expansion and job growth in California.

(b) Any effective economic development proposal must be meaningful to the target company; that is, it must be targeted and of sufficient magnitude to make a difference in the decisionmaking process of a company to locate or relocate its operations.

(c) The personal property tax, particularly for high-tech manufacturing facilities, is one of the largest fixed costs that must be faced by companies. Moreover, it is highest exactly at the point where factories are their least profitable—at the outset when most factories are operating at a loss. Several states address this problem by “phasing in” personal property taxes on new manufacturing facilities. The Legislature believes such a system would be beneficial to California’s economic development.

Article 2. Refund Actions by Taxpayers *

- § 5140. Action for refund.
- § 5141. Action for refund; limitation.
- § 5142. Necessity of refund claim.
- § 5143. Scope of action for refund.
- § 5144. Scope of judgment.
- § 5145. Action for refund after payment of first installment.
- § 5145.5. Action for refund after payment of first installment; escape assessments.
- § 5146. Indispensable parties.
- § 5147. Failure to return summons; dismissal.
- § 5148. Action for refund; state-assessed property.
- § 5149. Counsel for defense of city. [Repealed.]
- § 5149. Precedence over other civil actions.
- § 5149.5. Recovery of penalties, interest, and costs.

5140. Action for refund. The person who paid the tax, his or her guardian or conservator, the executor of his or her will, or the administrator of his or her estate may bring an action only in the superior court against a county or a city to recover a tax which the board of supervisors of the county or the city council of the city has refused to refund on a claim filed pursuant to Article 1 (commencing with Section 5096) of this chapter. No other person may bring such an action; but if another should do so, judgment shall not be rendered for the plaintiff.

History.—Stats. 1979, Ch. 730, in effect January 1, 1980, operative January 1, 1981, added “or conservator” after “guardian” in the first sentence. Stats. 1990, Ch. 992, in effect January 1, 1991, added “or her” after “his” throughout text and added “only” after “action” in the first sentence.

Note.—Section 14.5 of Stats. 1976, Ch. 499, p. 1244, provided no payment by state to local governments because of this act. Sec. 15 thereof provided that the provisions of this act shall be operative with respect to taxes which become due and payable on or after the lien date in 1977.

* Article 2 was added by Stats. 1976, Ch. 499, p. 1240, in effect January 1, 1977.

Construction.—Only the person who has actually paid the tax may bring action for refund. This section does not affect the determination of what property is taxable and what property is exempt. It merely sets forth the procedure for refunding taxes improperly collected. *Mayhew Tech Center, Phase II v. Sacramento County*, 4 Cal.App.4th 497.

Exhaustion of administrative remedies.—A partner in a cable television partnership was not precluded from bringing an action against a county seeking judicial relief from an assessment appeals board decision even though it was not an applicant in the board proceedings. The board treated the partner as if it were an applicant, the decision listed it in the caption and designated it as one of the applicants, the county never objected to the board's characterization of the partner as an "applicant", and the county itself referred to the partner as an applicant. The policies underlying the exhaustion requirement were fully satisfied even though the partner was not a formal applicant in the proceeding before the board. *CAT Partnership v. Santa Cruz County*, 63 Cal.App.4th 1071. The doctrine provides that when an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act. The doctrine prevents interference with the subject matter jurisdiction of another tribunal when an administrative tribunal was created by law to adjudicate the issue sought to be presented to the court and the claim is within the special jurisdiction of the administrative tribunal. *Plaza Hollister Limited Partnership v. San Benito County*, 72 Cal.App.4th 1.

Mandamus.—Administrative mandamus, Cal. Civil Code, sec. 1094.5, does not lie to review the validity of a decision before the assessment appeals board. *Mystery Mesa Christian Church, Inc. v. Assessment Appeals Bd. No. 1*, 63 Cal.App.3d 37.

Class action.—Taxpayer had no standing to bring a class action for refund because such actions are not authorized unless specifically provided for by statute. This section does not provide for a class action. *Neecke v. City of Mill Valley*, 39 Cal.App.4th 946.

Decisions Under Former Section 5098, Court Actions.

Payment by lessee.—A lessor may not recover taxes paid upon his property by the lessee pursuant to the provisions of the lease. *Easton v. Alameda County*, 9 Cal.2d 301.

5141. Action for refund; limitation. (a) An action brought under this article, except an action brought under Section 5148, shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund in whole or in part.

(b) Except as provided in subdivision (c), if the board of supervisors or city council fails to mail notice of its action on a claim for refund within six months after the claim is filed, the claimant may, prior to mailing of notice by the board of supervisors or city council of its action on the claim, consider the claim rejected and bring an action under this article.

(c) If an applicant for the reduction of an assessment states in the application that the application is intended to constitute a claim for refund pursuant to Section 5097, the claim for refund shall be deemed denied on the date the final installment of the taxes extended on such assessment becomes delinquent or on the date the equalization board makes its final determination on the application, whichever is later.

History.—Stats. 1978, Ch. 1188, in effect September 26, 1978 added subdivision designations and inserted subdivision (b). Stats. 1987, Ch. 1262, in effect January 1, 1988, added " , except an action brought under Section 5148, " after "article" in subdivision (a).

5142. Necessity of refund claim. (a) No action shall be commenced or maintained under this article, except under Section 5148, unless a claim for refund has first been filed pursuant to Article 1 (commencing with Section 5096).

No recovery shall be allowed in any refund action upon any ground not specified in the refund claim.

(b) When the person affected or his or her agent and the assessor stipulate that an application involves only nonvaluation issues, they may file a stipulation with the county board of equalization stating that issues in dispute do not involve valuation questions. To the extent possible, the stipulation shall also indicate the parties' agreement as to the assessment amounts that

would result under their respective positions on the issue or issues in dispute. The board shall accept or reject the stipulation, with or without conducting a hearing on the stipulation. The filing of, and the acceptance by the board of, a stipulation shall be deemed compliance with the requirement that the person affected file and prosecute an application for reduction under Chapter 1 (commencing with Section 1601) of Part 3 in order to exhaust administrative remedies. However, the filing of, and the acceptance by the board of, a stipulation under this subdivision shall not excuse or waive the requirement of a timely filing of a claim for refund.

(c) Nothing in this subdivision shall be construed to deprive the county board of equalization of jurisdiction over nonvaluation issues in the absence of a contrary stipulation.

History.—Stats. 1987, Ch. 1262, in effect January 1, 1988, added “, except under Section 5148,” after “article”, and deleted “of this chapter” after “(commencing with Section 5096)” in the first paragraph. Stats. 1993, Ch. 387, in effect January 1, 1994, added subdivision letter “(a)” before “No action” in the first sentence of the first paragraph; substituted “refund” for “such” after “in any” and added “refund” after “in the” in the first sentence of the second paragraph; and added subdivision (b).

Construction.—A claim for refund which stated that the assessor was “departing from established concepts of uniformity” was sufficient to raise an equal protection issue with respect to the appraisal issues under attack. *Schoderbek v. Carlson*, 152 Cal.App.3d 1027. Taxpayer’s use of the standard refund claim form provided by the county, attachment of a letter wherein county counsel acknowledged that taxpayer would file appeals or litigate the disputed assessments for the years at issue, and attachment of a document that detailed taxpayer’s belief that the assessor’s method of base year valuation was incorrect were together, detailed enough to put the county on notice that the claims involved the incorrect method of assessment of the initial base year value of its possessory interest, which is within the purview of Section 51.5. *Metropolitan Culinary Services, Inc. v. Los Angeles County*, 61 Cal.App.4th 935. A stipulated judgment between a county and a property taxpayer was void to the extent that it retroactively applied a reduction in base-year value resulting from an assessment appeal to assessment years predating the assessment appeal. Subdivision (a)(5) provides that any reduction in assessment made as the result of an appeal under the statute applies for the assessment year in which the appeal is taken and prospectively thereafter. *Plaza Hollister Limited Partnership v. San Benito County*, 72 Cal.App.4th 1.

Refund Amount.—A taxpayer who files a refund action can recover no more than the amount claimed in his underlying claim for refund. Thus, where taxpayers did not seek a refund based on the lower property values that they had submitted in their applications for reduction in assessments to the assessment appeals board, under this section and Section 5143, they could only file suit to recover, and the trial court could only award, the amount claimed in their claim for refund. *Mission Housing Development Company v. San Francisco*, 81 Cal.App.4th 522.

Class Action.—Plaintiffs lacked standing to maintain the action where they failed to allege that they had exhausted their administrative remedies by applying for and being denied relief by the county board of equalization or assessment appeals board. The named plaintiffs could have filed a claim for refund on behalf of themselves and on behalf of the members of the class. *Schoderbek v. Carlson*, 113 Cal.App.3d 1029.

Decisions Under Former Section 5104, Claim for refund required.

Application of section.—An action by a security interest holder to recover taxes paid by it in connection with personal property it had possessed and controlled following default on a security agreement is one for refund of taxes “erroneously or illegally collected”, subject to the provision of the section which makes a claim for refund mandatory. *Chrysler Credit Corp. v. Ostly*, 42 Cal.App.3d 663.

5143. Scope of action for refund. If a claim for refund relates only to the validity of a portion of an assessment, an action may be brought under this article only as to that portion.

5144. Scope of judgment. If the court finds that an assessment is void in whole or in part, it shall render judgment for the plaintiff for the amount of the taxes paid on that portion of the assessment that is found to be void. The taxes paid on the portion of the assessment not found to be void shall constitute valid taxes which, if paid after delinquency, shall carry penalties, interest, and costs.

Construction.—The use of the term “void” in this section corresponds in meaning with the term “validity” used in Revenue and Taxation Code Section 5143, implying that “void” refers to any taxes which are invalid. An invalid tax means any assessment which a taxpayer is not legally responsible for paying. *Norby Lumber Company, Inc. v. Madera County*, 202 Cal.App.3d 1352.

Judicial Review.—Against a claim that a valid valuation method has been applied erroneously, the Board’s decision is equivalent to a trial court determination, and the court may review only the record presented to the Board and may overturn the Board’s decision only when no substantial evidence supports it. Where a taxpayer challenges the validity of a valuation method itself, the court must determine as a question of law whether the challenged method is arbitrary, in excess of discretion, or in violation of standards prescribed by law. *ITT World Communications, Inc. v. Santa Clara County*, 101 Cal.App.3d 246. If the local board of equalization has used an improper method of value or has failed to use proper criteria in valuing the property, and there is no evidence or there is a conflict in the evidence from which a proper value can or should be made, the trial court must remand the matter to the local board for further proceedings. The constitutional responsibility to assess falls to the local board, not to the courts. *Norby Lumber Company, Inc. v. Madera County*, 202 Cal.App.3d 1352.

When reviewing an equalization determination properly before it in a property tax refund action, a court may correct an assessment and grant a tax refund if value is calculable as a matter of law without remanding to the county board of equalization. However, when judgment must still be exercised as to value, a remand to the local board of equalization is required. Accordingly, to the extent a stipulated judgment between a taxpayer and a county in a tax refund action represented an exercise of judgment as to value, it improperly invaded the constitutional authority of the board of equalization and granted relief which the court had no authority to grant under any circumstances. *Plaza Hollister Limited Partnership v. San Benito County*, 72 Cal.App.4th 1.

Decisions Under Former Section 5103, Court action authorized.

Judicial review.—The current standard of judicial scrutiny consists of arbitrariness, abuse of discretion or failure to follow the standards prescribed by the Legislature. When a taxpayer challenges the erroneous application of a valid method of appraisal, a court may review only the record of the equalization hearing to determine whether there is substantial evidence to support the decision. When the challenge is to the validity of the method, per se, the court is faced with a question of law which invokes the current standard. *Bret Harte Inn, Inc. v. San Francisco*, 16 Cal.3d 14.

City taxes collected by county.—Where recovery is sought of city taxes only which were collected by the county, the action may be brought against the county as well as the city. *Southwest Exploration Co. v. Orange County*, 44 Cal.2d 549.

5145. Action for refund after payment of first installment. (a) Notwithstanding the fact that all taxes on property have not been paid in full, the owner of that property may bring an action under Section 5140 at any time within six months after the rejection of a claim for the first installment under an installment plan of redemption pursuant to Article 2 (commencing with Section 4216) of Chapter 3 of Part 7, if the following requirements are satisfied:

(1) The first installment payment is made within six months of the delinquency of the taxes being paid by installments.

(2) If the balance of the unpaid tax liability remaining after the first installment payment has been made, plus penalties and interest thereon to the date of filing the actions, exceeds $66\frac{2}{3}$ percent of the full value of the property on which the taxes are a lien, as of the last equalized assessment roll, the taxpayer shall post a bond with the county tax collector in a sum equal to that excess or, in the alternative, pledge other property with the county tax collector in that amount as security. The requirement for a bond or additional security specified in this paragraph shall terminate when the balance of unpaid tax liability remaining after a subsequent installment payment, plus penalties and interest thereon to the date of such subsequent installment payment, no longer exceeds $66\frac{2}{3}$ percent of the full value of the property on which the taxes are a lien, as of the last equalized assessment roll. However, a new bond shall be posted or property pledged if, during the pendency of the action, the balance of unpaid tax liability, plus penalties and interest thereon, again exceeds $66\frac{2}{3}$ percent of the full value.

(b) The right to maintain an action under this section shall terminate if there is a default of any obligation by the owner in the installment plan of redemption on the property.

(c) If the owner does not recover the amount of taxes in dispute in an action brought under this section, he or she shall pay additional interest to the county or city equal to the difference between the interest he or she has paid under Article 2 (commencing with Section 4216) of Chapter 3 of Part 7 and the amount of interest the county or city would have earned on the funds in the impound account on the entire amount of tax determined by the court to be due, if such amount had been paid in equal installments on the tax delinquency dates.

History.—Stats. 1983, Ch. 1281, in effect September 30, 1983, deleted “of this division” after “Part 7” in subdivisions (a) and (c), added “or she” after every “he” in subdivision (c), and made grammatical corrections throughout the section.

5145.5. Action for refund after payment of first installment; escape assessments. (a) Notwithstanding the fact that all taxes on a property have not been paid in full, the owner of that property may, subject to the limitations set forth in subdivision (d), bring an action in accordance with Section 5140 at any time within six months after the rejection of a claim for the refund of the first installment that is paid under an installment plan for payment of escape assessments that is entered into pursuant to Section 4837.5.

(b) The right to maintain an action pursuant to this section shall terminate if there is a default on the part of the assessee with respect to any obligation in the installment plan for payment of the escape assessment.

(c) If the owner does not recover the amount of taxes in dispute in an action brought under this section, he or she shall pay additional interest to the county or city in an amount equal to the difference between the amount of interest he or she has paid under Section 506 and the amount of interest that the county or city would have earned in the impound account in connection with the entire amount of tax determined by the court to be due if that amount had been paid prior to delinquency.

(d) (1) This section shall not apply in cases where the penalty pursuant to Section 503 has been added to the escape assessment and upheld by the appeals board or the county board of equalization.

(2) This section shall apply to installment plans initiated by written requests filed with the tax collector on or after July 1, 1997.

History.—Added by Stats. 1997, Ch. 941 (SB 542) in effect January 1, 1998.

5146. Indispensable parties. If all or any portion of the taxes sought to be recovered were collected by officers of the county for a city or cities, an action must be brought against the county for the recovery of those taxes. When an action is filed against a county for taxes collected by the county on behalf of a city or cities, the county shall give notice of that action to the city or cities within 30 days of the county’s receipt of the summons and complaint. A fee shall be payable by the assessee in an amount prescribed by the court to cover the reasonable costs incurred by a county or counties in giving the required notice. Any city receiving notice of the action filed against the

county may, within 30 days of the receipt of that notice, intervene in that action. Whether or not a city intervenes in the action, any judgment rendered for an assessee shall be entered exclusively against the county; however, the county shall be entitled to recover separately from the city or cities and other tax entities those taxes collected by the county on behalf of the city or cities and other tax entities which are subject to refund to the assessee as a result of the judgment. Payment to the taxpayer upon the judgment and any interest thereon may be deferred by the county until the apportionment of property tax revenue next following the date of the judgment, or as the county and the taxpayer may otherwise agree. Interest shall accrue during any deferral period unless the county and taxpayer otherwise agree. The county may if it chooses to do so offset the amount of the judgment and interest recoverable by it from the city or cities and other tax entities against amounts held in the county treasury therefor or against amounts due and payable thereto, including, but not limited to, property tax apportionments. The amount of the fee required by this section shall not be recoverable by the assessee in the action and no judgment entered in the action in favor of the assessee shall provide for the recovery of the fee.

As used in this section, "county" includes a city and county.

If all or any portion of the taxes sought to be recovered were levied on state-assessed property, property which the board has found ineligible for the welfare exemption pursuant to Section 254.5, or property as to which the board has reviewed the assessment pursuant to Section 11 of Article XIII of the Constitution, the board shall be joined as a party to the action.

History.—Stats. 1987, Ch. 1262, in effect January 1, 1988, renumbered the section which was formerly numbered 5148; added "or cities" after "city", substituted "county" for "city" after "against the", substituted "those" for "such" after "recovery of" and deleted "and judgment must be sought against the city" after "taxes" in the first sentence of the first paragraph; deleted the former second sentence which provided "Where actions are brought against both a county and a city such actions may be joined in one complaint"; added the second, third, fourth, fifth, sixth, seventh, eighth, and ninth sentences to the first paragraph; added the second paragraph; and substituted "any portion" for "part" after "all or", and deleted "of the Revenue and Taxation Code" after "pursuant to" in the third paragraph.

5147. Failure to return summons; dismissal. (a) No refund action hereafter commenced shall be further prosecuted, and no further proceedings shall be had therein, and any refund action hereafter commenced shall be dismissed by the court in which the action was commenced, on the court's own motion or on the motion of any defendant therein, unless the summons was issued and served and the return thereon was made within one year after the commencement of the action, except where the parties have filed a stipulation in writing that the time may be extended or the party against whom the action is prosecuted has made a general appearance in the action.

(b) For purposes of this section, none of the following constitutes a general appearance in the action:

(1) A stipulation pursuant to Section 583.230 of the Code of Civil Procedure extending the time within which service must be made.

(2) A motion to dismiss made pursuant to this chapter, whether joined with a motion to quash service or a motion to set aside a default judgment, or otherwise.

(3) An extension of time to plead after a motion to dismiss made pursuant to this chapter.

History.—Stats. 1990, Ch. 126, in effect June 11, 1990, added "(a)", substituted "refund" for "such" after "No", substituted "any refund action" for "all such actions" after "therein, and", substituted "shall" for "must" after "commenced", substituted "action was" for "same shall have been" after "which the", substituted "the court's" for "its" after "on", deleted comma after "own motion", added comma after "thereon", substituted "the" for "said" after "commencement of", and added "or the party . . . the action" after "extended" in subdivision (a), and added subdivision (b).

Construction.—The right to seek dismissal of action on the basis of an untimely return of summons is waived where the filing of answers and the participating in discovery indicate an intent to submit the issues in the action to a trial on the merits. *Synanon Foundation, Inc. v. Marin County*, 133 Cal.App.3d 607. Dismissal of action is proper where summons was not returned timely, even though County made a general appearance by filing an answer one month after complaint was filed. There is no "general appearance" exception to the one-year service and return requirement. *Ford Motor Co. v. Tulare County*, 145 Cal.App.3d 688. Dismissal of action is proper where summons was not returned timely, even though county filed a motion to transfer the action to superior court two months after the filing of the complaint and waited two months following the one-year period before filing its motion for dismissal. *Emberton v. San Diego County*, 186 Cal.App.3d 268. The "general appearance" exception to the one-year service and return requirement applies to motions to dismiss under this section, even though the section does not contain an express provision for such an exception. *Southern Pacific Transportation Co. v. State Board of Equalization*, 175 Cal.App.3d 438.

5148. Action for refund; state-assessed property. Notwithstanding Section 5140, an action to recover taxes levied on state-assessed property arising out of a dispute as to an assessment made pursuant to Section 721, including a dispute as to valuation, assessment ratio, or allocation of value for assessment purposes, shall be brought under this section. In any action brought under this section, the following requirements shall apply:

(a) The action shall be brought by the state assessee. There shall be a single complaint with all parties joined therein with respect to disputes for any year.

(b) The action shall name the board and the county or counties. When a county is named which collected taxes on behalf of a city or cities, the county shall give notice of that action to the city or cities within 30 days of receipt of advice from the board of the action. A fee shall be payable by the state assessee in an amount prescribed by the court to cover the reasonable costs incurred by a county or counties in giving that notice. Any city receiving notice of the action filed against the board and the county may, within 30 days of the receipt of that notice, intervene in that action. Whether or not a city intervenes in the action, any judgment rendered for an assessee shall be entered exclusively against the county; however, the county shall be entitled to recover separately from the city or cities and other tax entities those taxes collected by the county on behalf of the city or cities and other tax entities which are subject to refund to the assessee as the result of the judgment. Payment to the taxpayer upon the judgment and any interest thereon may be deferred by the county until the apportionment of property tax revenue next following the date of the judgment, or as the county and the taxpayer may otherwise agree. Interest shall accrue during any deferral period unless the county and taxpayer otherwise agree. The county may if it chooses to do so offset the amount of the judgment and interest recoverable by it from the city or cities and other tax entities against amounts held in the county treasury therefor or against amounts due and payable thereto, including, but not limited to, property tax apportionments. The amount of the fee required by

this section shall not be recoverable by the assessee in the action and no judgment entered in the action in favor of the assessee shall provide for the recovery of the fee.

As used in this section, "county" includes a city and county.

(c) Service of the summons and complaint shall be only upon the board. The board shall serve as agent of the defendant county or counties for the purpose of service of process. A fee shall be payable by the state assessee in an amount prescribed by the court to recover all reasonable costs incurred by the board while acting in its capacity as agent for the defendant counties.

(d) Venue of the action shall be in any county in which the Attorney General of California has an office or in which the state assessee has a significant presence.

(e) The action shall be limited in the case of valuation and allocation disputes to the grounds specified in the following:

(1) A petition for reassessment filed under Section 741, or any proceeding thereon.

(2) A petition for correction of allocated assessment filed under Section 747, or any proceeding thereon.

(f) A timely filed petition for reassessment or petition for correction of allocated assessment shall constitute a claim for refund if the petitioner states in the petition it is intended to so serve.

(g) The action shall be commenced only after payment of the taxes in issue and within four years after the latest of the dates that the State Board of Equalization mailed its decision or its written findings and conclusions on the following:

(1) A petition for reassessment filed under Section 741 and intended to constitute a claim for refund.

(2) A petition for correction of allocated assessment filed under Section 747 and intended to constitute a claim for refund.

(h) The action shall not be joined with any action filed under Section 5140.

(i) Any refund of tax overpayments and any interest thereon, determined in any action brought under this section to be due shall be made by the defendant county or counties.

History.—Added by Stats. 1987, Ch. 1262, in effect January 1, 1988.

5149. Counsel for defense of city. [Repealed by Stats. 1987, Ch. 1262, in effect January 1, 1988.]

5149. Precedence over other civil actions. All courts wherein actions brought under this part (with the exclusion of actions brought under Section 5148) are or hereafter may be pending shall give those actions precedence over all other civil actions therein, except actions to which special precedence is given by law, in the matter of setting same for hearing or trial, and in hearing the same, to the end that all those actions shall be quickly heard and determined.

History.—Stats. 1981, Ch. 550, in effect January 1, 1982, substituted “part” for “article” after “under this”. Stats. 1987, Ch. 1262, in effect January 1, 1988, renumbered the section which was formerly numbered 5146, and substituted “those” for “such” after “give” and after “all”. Stats. 1988, Ch. 1372, in effect January 1, 1989, added “(with the exclusion of action brought under Section 5148)” after “part”.

Note.—Section 4 of Stats. 1981, Ch. 850, provided if any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections, parts, clauses, and phrases shall not be affected but will remain in full force and effect.

5149.5. Recovery of penalties, interest, and costs. Where the taxes sought to be recovered have been paid after delinquency, the amount of penalties, interest or costs recoverable in actions brought under this article shall be computed only on the taxes recovered.

Article 2.5. Interest on Refunds

- § 5150. Interest on taxes for which recovery allowed. [Repealed.]
- § 5150.5. Recovery of interest on penalties.
- § 5151. Other interest payable.
- § 5152. Attorney fees and costs.
- § 5153. Impounded funds—interest payable.

5150. Interest on taxes for which recovery allowed. [Repealed by Stats. 1994, Ch. 705, in effect January 1, 1995.]

5150.5. Recovery of interest on penalties. In any action in which the recovery of a penalty assessed pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 830 is allowed by the court, the plaintiff shall be entitled to interest on the penalties for which recovery is allowed, at the applicable rate or rates in effect from time to time and payable on a refund of tax as provided in Section 5151. This interest shall be payable from the date of filing of the claim for refund, but in no event earlier than the date of payment of the penalty or installments thereof sought to be refunded, to the date of entry of judgment. This accrued interest shall be included in the judgment.

History.—Added by Stats. 1985, Ch. 1091, effective January 1, 1986. Stats. 1994, Ch. 705, in effect January 1, 1995, substituted “5151” for “5150” after “provided in Section” in the first sentence.

5151. Other interest payable. (a) Interest at the greater of 3 percent per annum or the county pool apportioned rate shall be paid, when that interest is ten dollars (\$10) or more, on any amount refunded under Section 5096.7, or refunded to a taxpayer for any reason whatsoever. However, no interest shall be paid under the provisions of this section if the taxpayer has been given the notice required by Section 2635 and has failed to apply for the refund within 30 days after the mailing of that notice. For purposes of this section, “county pool apportioned rate” means the annualized rate of interest earned on the total amount of pooled idle funds from all accounts held by the county treasurer, in excess of the county treasurer’s administrative costs with respect to that amount, as of June 30 of the preceding fiscal year for which the refund is calculated. For each fiscal year, the county treasurer shall advise the Controller of the county pool apportioned rate, and of computations made in deriving that rate, no later than 60 days after the end of that fiscal year.

(b) The interest rate provided for in subdivision (a) does not apply to interest on refunds of those amounts of tax that became due and payable before March 1, 1993. Interest on refunds of amounts of a qualified tax shall be paid at that rate provided for by this section as it read prior to January 1, 1993. As used in this section, a "qualified tax" means a tax that became due and payable before March 1, 1993, and had not been refunded as of April 6, 1995. This subdivision shall not be construed to affect the interest paid on refunds of those amounts of tax that became due and payable before March 1, 1993, and have been refunded as of April 6, 1995.

(c) (1) The interest computation period shall commence with the date of payment of the tax when any of the following apply:

(A) A timely application for reduction in an assessment was filed, without regard to whether the refund ultimately results from a judgment or order of a court, an order of a board of equalization or assessment appeals board, or an assessor's correction to the assessment roll.

(B) The refund is pursuant to a roll correction resulting from the determination or adjustment by the assessor or a local assessment appeals board of a base year value.

(C) The refund results from a correction to the assessment roll pursuant to Section 4831 or 4876.

(2) Interest on refunds of taxes on property acquired by a public agency in eminent domain shall accrue from the date of recordation of the deed.

(3) In all other cases the interest computation period shall commence on the date of filing a claim for refund or payment of tax, whichever is later. However, in the event of the granting of property tax relief pursuant to Section 69, 69.3, or 170, interest is not payable on any resulting refund of taxes, provided that payment of that refund of taxes is made within 120 days after the county assessor has sent authorization for the reduction to the county auditor.

(d) The computation of interest shall terminate as of a date within 30 days of the date of mailing or personal delivery of the refund payment.

(e) The interest charged shall be apportioned to the appropriate funds, as determined by the county auditor.

(f) The amendments made to this section by the act adding this subdivision shall apply to all refunds made after January 1, 1997.

History.—Added by Stats. 1970, p. 1255, in effect November 23, 1970. Stats. 1976, Ch. 499, p. 1240, in effect January 1, 1977, renumbered the section which was formerly numbered 5108. Stats. 1978, Ch. 740, in effect September 26, 1978, added "or as a consequence of an assessor's clerical error" after "taxes" in the first sentence of the first paragraph; and added "whichever of the three following dates provides the longest period:" After "computed from" in the first sentence of the second paragraph, deleted "or from" after "refund", and substituted "or a date preceding by 30 days the date of paying the refund." for "provided, however that no interest shall be paid under the provisions of this section if such period of time is 30 days or less" after "property" in subsection (b) thereof. Stats. 1980, Ch. 411, in effect July 11, 1980, operative January 1, 1981, substituted "9 percent" for "6 percent" and deleted "5096.3 or" after "Section" in the first sentence of the first paragraph. Stats. 1982, Ch. 690, in effect January 1, 1983, substituted "using" for "from" and "periods" for "dates" in the first sentence of, added the subsection letters, and substituted subsection (c) for "or a date preceding by 30 days the date of paying the refund" in the second paragraph. Stats. 1983, Ch. 737, in effect January 1, 1984, substituted "that" for "such" after "when", substituted "any amount" for "amounts" after "on", deleted "clerical" after "assessor's", and added ", or as the result . . . assessee" after "error" in the first sentence, and substituted "that" for "such" after "mailing of" in the second sentence of the first paragraph; and deleted "three" after "of the" in the first sentence of the second paragraph, and added subsection (d) thereto. Stats. 1992, Ch. 523, in effect January 1, 1993, added "county pool apportioned" after "the", deleted "of 9 percent per annum" after "rate" in the first sentence of the first paragraph; added "For purposes . . . calculated." as the third sentence in the first paragraph; added "that

was . . . decision," after "tax roll" in subsection (c). Stats. 1995, Ch. 498, in effect January 1, 1996, added subdivision letter (a) before "Interest at", added "greater of 3 percent per annum or the" after "Interest at the", substituted "to a taxpayer for any reason whatsoever" for "as a result of the reduction of assessed value following an application for equalization by a board of equalization or by a court action to recover taxes, or as a consequence of an assessor's error, or as the result of an incorrect assessment not occasioned by the act or omission of the assessee" after "or refunded" in the first sentence, and substituted "is" for "was" after "the refund" in the third sentence of subdivision (a); added subdivision (b); and added subdivision letter (c) before "Interest allowed", and substituted paragraph numbers (1), (2), (3), and (4) for (a), (b), (c), and (d), respectively, in subdivision (c). Stats. 1996, Ch. 171, in effect July 17, 1996, substituted "county pool apportioned rate" for "county pooled apportioned rate" in the second sentence and added the third sentence commencing with "For each fiscal" of subdivision (a); substituted "The interest rate provided for in subdivision (a)" for "Subdivision (a)" before "does not apply" in the first sentence, substituted "refunds of amounts of a qualified tax" for "refunds of those amounts of tax that became due and payable before March 1, 1993, and have not been refunded as of April 6, 1995," after "interest on" in the second sentence, and added the third sentence commencing with "As used in" of subdivision (b); deleted former subdivision (c) related to determining the interest rate computation period and added new subdivision (c); lettered the former second sentence of former subdivision (c) as subdivision (e); and added subdivision (f). Stats. 1996, Ch. 801, in effect September, 24, 1996, added the second sentence of subparagraph (3) of paragraph (1) of subdivision (c).

Note.—Section 19 of Stats. 1995, Ch. 498 stated that the addition of subdivision (b) was declaratory, not a change to, existing law.

Construction.—The de minimus ten dollar (\$10) classification scheme of the section is reasonably related to the legitimate state interest of easing administrative burdens, and violates neither the constitutional right to equality of taxation nor the right to equal protection under either state or federal law. *Cohan v. Alvord*, 162 Cal.App.3d 176. This section and Section 5150 are in pari materia and should be construed harmoniously if reasonably possible. Thus, it must be concluded that this section does not apply when interest is included in a judgment for recovery of taxes but rather, it was intended to provide for inclusion of interest in refunds made directly by the assessing and taxing authorities. So where taxes were due after March 1, 1977, and before March 1, 1981, the interest to be included in the judgment pursuant to Section 5150 was 6 percent, running from the dates the claims for refund were filed. And where postjudgment interest accrued, as the result of Government Code Section 970.1, which provides that Code of Civil Procedure Section 685.010 is inapplicable to money judgments against local governments, the constitutional rate of 7 percent was applicable. *Union Pacific Railroad Co. v. State Board of Equalization*, 231 Cal.App.3d 983.

5152. Attorney fees and costs. In an action in which the recovery of taxes is allowed by the court, if the court finds that the void assessment or void portion of the assessment was made in violation of a specific provision of the Constitution of the State of California, of this division, or of a rule or regulation of the board, and the assessor should have followed the procedures set forth in Section 538 in lieu of making the assessment, the plaintiff shall be entitled to reasonable attorney's fees as costs in addition to the other allowable costs. This section is ancillary only, and shall not be construed to create a new cause of action nor to be in lieu of any other provision of law.

History.—Added by Stats. 1978, Ch. 1188, in effect September 26, 1978.

Construction.—It is a prerequisite to an attorney fee award under this section and Section 538 that a factual finding be made that the reason the assessor did not apply a particular provision was that he or she believed it to be unconstitutional or invalid, not that the assessor believed that the statute or regulation was simply inapplicable. Thus, a finding that the failure of a county to apply provisions of a property tax rule was a matter of a misunderstanding of the law precluded attorneys fees. *Phillips Petroleum Co. v. Lake County*, 15 Cal.App.4th 180.

Assessment contrary to rule.—An assessor disagreeing with property tax rule 4 should have brought a declaratory relief action against the Board pursuant to this section rather than making an assessment against real property without following the dictates of the rule. Since he did not do so, attorneys fees were properly awarded under this section. *Prudential Insurance Co. v. City and County of San Francisco*, 191 Cal.App.3d 1142.

5153. Impounded funds—interest payable. Notwithstanding Sections 5150 and 5151, whenever the auditor has impounded revenues pursuant to subdivision (a) of Section 26906.1 of the Government Code and those revenues are ultimately used to provide a refund of tax to the affected taxpayer or taxpayers, interest due to the taxpayer or taxpayers for the period that those funds were impounded shall be calculated and paid at the rate, or rates where the applicable rate fluctuated, earned by the county on those revenues during the period of impoundment.

History.—Added by Stats. 1993, Ch. 387, in effect January 1, 1994.

Article 3. Action by Public Agency

5161. **Action by public agency.** (a) Any action to recover taxes pursuant to Article 2 (commencing with Section 5140) by any county, city and county, or municipal corporation shall be brought and tried in any county other than the plaintiff or the county in which the plaintiff is situated and other than the defendant or the county in which defendant is situated.

(b) No judge of the superior court in the plaintiff county or the county in which the plaintiff is situated or in the defendant county or the county in which the defendant is situated shall sit or act in any action brought pursuant to this section.

(1) Any party to or any attorney appearing in any such action may establish such disqualification by an oral or written motion without notice supported by affidavit that the judge before whom such action is pending or to whom it is assigned is disqualified by virtue of this section. Where the judge assigned to or who is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least five days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. In no event shall any judge entertain such motion if it be made after the making of an opening statement by counsel for plaintiff, or if there be no such statement, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion must be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be.

(2) If such motion is duly presented and such affidavit is duly filed, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge of the court in which the trial or matter is pending or, if there is no other judge of the court in which the trial or matter is pending, the chairman of the judicial council shall assign some other judge to try such cause or hear such matter as promptly as possible. Under no circumstances shall a party or attorney be permitted to make more than one such motion in any one action pursuant to this section; and in actions where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action, only one motion for each side may be made in any one action or special proceeding.

(3) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the

cause or matter shall be continued from day to day or for other limited periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

History.—Added by Stats. 1961, p. 4172, in effect September 15, 1961. Stats. 1976, Ch. 499, p. 1243, in effect January 1, 1977, substituted “Article 2 (commencing with Section 5140)” for “Sections 5103 or 5138” in subdivision (a), and deleted “after the drawing of the name of the first juror, or if there be no jury,” after “made” in the fourth sentence of subdivision (b)(1).

Article 3.5. Scope of Judicial Review of Assessments in Refund Actions

5170. Scope of Judicial Review of Assessments in Refund Actions. In suits for the refund of state-assessed property taxes, the trial court shall not be restricted to the administrative record, but shall consider all evidence relating to the valuation of the property admissible under the rules of evidence. The court shall base its decision upon the preponderance of the evidence before it.

History.—Added by Stats. 1988, Ch. 1372, in effect January 1, 1989.

Construction.—This section, by its own terms, applies only to property assessed by the Board pursuant to Article XIII, Section 19 of the Constitution and hence, is inapplicable in suits for refund of local property taxes. *Simms v. Pope*, 218 Cal.App.3d 472. This section vests the trial court in a tax refund action with the power of independent review, allowing it to consider all evidence relating to the valuation of the property, not just the evidence in the administrative record. Thus, where the trial court exercises the power of independent review, the appellate court must determine, on the entire record, whether substantial evidence supports the trial court’s findings as opposed to those of the administrative agency involved. The evidence must be of ponderable legal significance, reasonable in nature, credible, and of solid value. *Southern Pacific Pipe Lines, Inc. v. State Board of Equalization*, 14 Cal.App.4th 42.

Article 4. Disputes Over Valuation of State-Assessed Property

5180. Disputes over valuation of state-assessed property. The potential exists for a majority of the counties, the State Board of Equalization, and the Attorney General to resolve disputes over the valuation of state-assessed property for the 1991 assessment year and prior assessment years by entering into a settlement agreement with various state assessees. To facilitate this agreement, it may become necessary to seek a validation action under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. The counties may find it necessary to retain private counsel to represent their collective interests.

(a) In the event a majority of the 58 counties approve a settlement agreement as described in this section, and find it necessary to retain private counsel to represent their collective interest in a validation action, it shall be considered essential that a special “Validation Action Defense Trust Fund” be created. The Validation Action Defense Trust Fund shall be administered by the county having the largest financial interest in the settlement agreement. The fund shall be created by each county or city and county that approves the settlement agreement contributing a flat amount depending upon the population reported in the California Association of Counties Roster for the 1992-93 fiscal year and a sum representing its percentage of the total valuation of the 1991-92 fiscal year state-assessed property tax roll from the utilities which approved the settlement agreement, as applied against a base of one million dollars (\$1,000,000) less the sum of the flat amounts contributed by all counties. For the flat amount, counties with populations of

1,000,000 or more shall contribute five thousand dollars (\$5,000), counties with populations of 100,000 but less than 1,000,000 shall contribute two thousand five hundred dollars (\$2,500), and counties with populations of less than 100,000 shall contribute one thousand dollars (\$1,000). The State Board of Equalization shall compute and furnish to the counties the percentages necessary to compute the valuation portion of each county's valuation-based contribution to the fund.

The auditor of each county or city and county approving the settlement agreement shall retain from the first installment of 1992-93 state-assessed property tax revenues to be allocated to each county or city and county as well as all other local agencies, including cities, special districts, schools, and community redevelopment agencies, the amounts required by this subdivision, plus any other costs necessarily incurred in reaching and implementing the settlement agreement described in this section.

The auditor of each county or city and county, upon first receipt of property tax revenues from the state-assessed roll, shall transfer to the auditor of the administering county for deposit into the Validation Action Defense Trust Fund the amounts set forth in this subdivision. The amount so transferred shall be accounted for as a revenue reduction.

(b) The county that administers the Validation Action Defense Trust Fund pursuant to subdivision (a) shall have the authority to enter into an agreement with, and reimburse, private counsel, provided that the private counsel has been selected by a committee of not less than five counties which have been authorized by a majority of the 58 counties to represent them in the settlement of litigation. This committee also shall be charged with responsibility for supervising the litigation.

(c) Upon the conclusion of the validation action, but not later than January 1, 1995, any surplus funds remaining in the special Validation Action Defense Trust Fund, plus any accrued interest, shall be returned to counties in the same percentage in which they were contributed.

3666
2003-1

Property Taxes Law Guide
PROPERTY TAXATION